DOCUMENT RESUME

ED 374 064 SO 024 498

AUTHOR	Wagner, Kenneth A.; And Others
TITLE	Becoming Informed Citizens: Lessons on the Bill of Rights and Limited Government.
INSTITUTION	California State Univ., Los Angeles.
SPONS AGENCY	National Endowment for the Humanities (NFAH), Washington, D.C.
PUB DATE	93
NOTE	248p.
AVAILABLE FROM	Regina Books, P.O. Box 280, Claremont, CA 91711.
PUB TYPE	Guides - Classroom Use - Instructional Materials (For Learner) (051) -- Guides - Classroom Use - Teaching Guides (For Teacher) (052)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	Citizenship Education; Civics; Civil Liberties; *Constitutional History; *Constitutional Law; Due Process; Equal Protection; *Law Related Education; Resource Materials; Resources; Resource Units; Secondary Education; Social Studies; United States History
IDENTIFIERS	*Bill of Rights; California State University Los Angeles

ABSTRACT

Presenting U.S. history teachers with a set of 26 lessons, this book is designed to help educators teach about the Bill of Rights and to assist students in understanding important events and concepts related to the Bill of Rights. The book begins with the fundamental concepts of government, law, and historical roots of the Bill of Rights and concludes with the rights of persons accused of crime and discussion of liberties such as privacy. Lesson plans are provided and include necessary preparations, sequence of instruction, closing the lesson, key words, and vocabulary teaching suggestions. Throughout the volume, lessons, exercises, and activities are designed to assist students in mastering facts and concepts. (RJC)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it

☐ Minor changes have been made to improve reproduction quality

● Points of view or opinions stated in this document do not necessarily represent official OERI position or policy

"PERMISSION TO REPRODUCE THIS MATERIAL IN **OTHER THAN PAPER COPY** HAS BEEN GRANTED BY

John Hyland

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)"

ED 374 064

SO 024 458

BECOMING INFORMED CITIZENS:
LESSONS ON THE BILL OF RIGHTS AND LIMITED GOVERNMENT

Kenneth A. Wagner
John T. Hyland
Donald O. Dewey

California State University Los Angeles
5151 State University Drive
Los Angeles, California
Phone (213) 343-2000

BEST COPY AVAILABLE

BECOMING INFORMED CITIZENS II: LESSONS ON THE BILL OF RIGHTS AND LIMITED GOVERNMENT

Table of Contents

Acknowledgments

Foreword to the Teacher: Teaching About the Bill of Rights

The Origin of the Bill of Rights

The Bill of Rights in Action: An Overview

BILL OF RIGHTS
Timeline

1215	1689	1776	1776	1787	1791
Magna Carta	English Bill of Rights	Dec of Ind	Vir Bill of Rights	U.S. Const	Bill of Rights

1833	1868	1925	1965	1990
Barron v. Baltimore	14th Amendment	Gitlow v. New York	Griswold v. Connecticut	Smith v. Oregon

I - FUNDAMENTAL CONCEPTS
- A - What is Government?
- B - The Functions of Law
- C - The Constitution Is the Supreme Law
- D - The Bill of Rights

II - ROOTS OF THE BILL OF RIGHTS
- A - John Locke and Natural Rights
- B - English Influences on the Bill of Rights
- C - What is a Principle? What is a Right? A Lesson on the Virginia Declaration of Rights
- D - The Antifederalists - "The Liberties Must be Enumerated"
- E - Biographies of the Framers: George Mason and James Madison

III- CONSTRAINTS ON POWER NEEDED TO PROTECT CIVIL LIBERTIES
A - Separation of Powers: Divide the Power into Three Branches
B - Checks and Balances are Needed Too: "Ambition Must be Made to Counteract Ambition"
C - Judicial Review: The Courts Assume Power

IV - FEDERALISM: THE HORIZONTAL DIVISION OF POWERS
A - Federalism: The Concept
B - Judicial Review and Federalism: Who is Protected by the Bill of Rights?
C - The Fourteenth Amendment and the Second Bill of Rights

V - FIRST AMENDMENT LIBERTIES - Substantive Issues
A - The "Lemon Test" and the Establishment Clause
B - Religious Beliefs and the Flag Salute
C - Freedom of Speech: What are the Limits?
D - Freedom of the Press: Defining the Limits
E - Freedom of the Press: An Application

VI. RIGHTS OF PERSONS ACCUSED OF CRIME - The Procedural Amendments
A - The Fourth Amendment, the Exclusionary Rule and the Schools
B - The Fifth Amendment and Due Process of Law
C - Due Process of Law and the Japanese Internment

VII - OTHER LIBERTIES
A - The Ninth Amendment, Privacy Rights, and Incorporation Plus
B - The Bill of Rights in Schools
C - Voting Rights Amendments

VIII - SUMMARY AND SYNTHESIS

FOREWORD TO THE TEACHER

Introduction:

The purpose of this book is to provide teachers of United States History with a set of lessons which will effectively assist in teaching about the Bill of Rights and which will effectively assist students to genuinely understand important events and concepts related to the Bill of Rights. We believe that one of the chief tasks of public education is civic education and that to prepare students for adulthood includes preparing them to participate as constructive citizens in our constitutional democracy. Understanding the history and the meaning of the Bill of Rights is integral to civic education. Soon the United States will join nations and citizens around the world in celebrating the turn of the century. As United States History teachers prepare students to step across the threshold of the new century as well as begin the next millennium, we are hopeful that these lessons will be helpful and supportive of their efforts.

Organization of the lessons:

This book, divided into eight chapters, begins with the fundamental concepts of government and law and the historical roots of the Bill of Rights, and ends with the rights of persons accused of crime and discussion of other liberties such as privacy. Throughout the chapters students are introduced in a systematic and orderly manner to key events, important facts, essential concepts, and pivotal cases. The chapters bear the imprint of teachers ideas and classroom experience and our intent has been to provide materials which teachers will find useful and appropriate to the actual conditions of their classroom. Each chapter begins with a brief overview and a listing of the lessons in the chapter.

Each lesson is organized in the same manner and begins with an **overview** of the lesson followed by a statement of the **purpose** of the lesson for students. For each lesson there are sections prepared for the teacher detailing **necessary preparations**, the **sequence of instruction**, and ways for **closing the lesson.** We have included a list of **key words and vocabulary teaching suggestions** which can be used by the teacher to ensure that students develop and expand their vocabulary. Each of the lessons includes materials which have been carefully prepared for use by the students. Throughout each lesson, exercises and activities for students have been included to assist them in fully mastering facts and concepts. Word challenges have been included to assist the teacher in easily determining when students have acquired the concepts. A variety of teaching approaches have been included in the lessons in an effort to ensure that the content is accessible to the students and ensure that the content is connected to the student's background and experience. The lessons incorporate a variety of oral and written activities in order to promote high levels of student comprehension and the lessons are organized with many opportunities for students to interact with the teacher and their peers ensuring that each student has ample opportunity to reach a high level of achievement.

It is our hope that these lessons will be taught throughout the school year at those times in the course of instruction where the events of American History being taught would be linked to the history of the Bill of Rights. In this way, students can repeatedly be reminded of the importance of the Bill of Rights throughout American History. However the lessons could also be presented as a unit of study.

Teachers who use these lessons will find a rich reservoir of political and historical material. Our hope is to support teachers' efforts to teach the Bill of Rights, to nurture students civic development, and to help ensure that the blessings of liberty are secure for the students and their descendents.

Becoming Informed Citizens II: Lessons on the Bill of Rights and Limited Government is a companion-piece to Becoming Informed Citizens: Lessons on the Constitution for Junior High School Students (Regina Books, 1988), which was the product of 1985 and 1986 institutes which were also funded by the National Endowment for the Humanities.

This volume is dedicated to the memory of Karen Thorne, a teacher at Horace Mann Junior High School in Los Angeles, who participated in both the 1991 and 1993 institutes, and who died only four months after the latter.

ACKNOWLEDGMENTS

This book is the product of extended collaboration among the authors and a group of outstanding Los Angeles County teachers, who participated in a series of teacher institutes on constitutional issues, which were offered at California State University, Los Angeles, funded by the National Endowment for the Humanities.

Participants in a 1991 institute on the Bill of Rights worked with the authors in proposing lesson plans on a variety of subjects related to American liberties. In some cases, these proposals were perfected by participants in a 1993 institute on Politics and the Constitution; other participants worked on other lesson plans related to the Bill of Rights or Politics and the Constitution.

Participants in the 1991 institute were Carol Enseki-Miller, Susan Busch, John J. Ortega, Dawn Carol Weldon, Debra Lynn Hicks, Gerald Gandolfo, Noreen Arroyo, Stephen E. Bailey, Jill Barnes, Michael Cannon, John H. Carter, Mike Diamond, Bruce Galler, Darlene Grenther, Robert M. Jagielski, Reginald Jamerson, Catherine Kilkes, Robert Lavin, Henri Robert Lee, Steve Lewallen, Patricia Llewellyn, Franklin Mata, Susan Nerenberg, Mark Nichols, Paul O'Grady, Ted Phegley, Beverly Rogers, Richard R. Root, Mary E. Rough, William Sanderl, Warren Schaffer, Frances Spencer, Jennifer Stalcup, Derek Steinorth, Karen Thorne, Lon Wagner, Kathleen Wolf, and Karalee Wong.

Participants in the 1993 institute were Gerald Gandolfo, William Sanderl, Trudy M. Hatter, Susan Busch, Carol Enseki-Miller, Stephen J. Bailey, Michael Cannon, Marilyn Fuss, Bruce Galler, Margarita Gonzalez, Catherine Kilkes, Janelle Korogianos, Keith Joyce, Henri Robert Lee, Dansen L. Lipock, Patricia Llewellyn, Ameen Mohamed, Karalee Nakatsuka, Chris Pagliaro, Ann Pattillo, Robert J. Perkins, Larry Rollins, Martin Saldivar, Michael Sam, Jack Sodikoff, Frances Spencer, Karen Thorne, and Linda White.

Our endeavors were encouraged and enlightened by these lecturers who visited both in 1991 and 1993: Paul Murphy from the University of Minnesota; Melvin Urofsky from Virginia commonwealth University; and Paul Zall from the Henry E. Huntington Library. Other lecturers in 1991 were Robert Rutland from the University of Virginia and Edward Goldberg from California State University, Los Angeles. Joining us in 1993 was Samuel T. McSeveney of Vanderbilt University. We are particularly grateful for the wise counsel provided by the external reviewer who spent four days at both institutes: John J. Patrick, Director of the Social Studies Development Center, Indiana University.

THE ORIGIN OF THE BILL OF RIGHTS

The addition of a Bill of Rights to the United States Constitution was proposed only five days before the final session of the Federal Convention of 1787. On September 12, George Mason of Virginia "wished the plan had been prefaced with a Bill of Rights." He added that it would "give great quiet to the people; and with the aid of the State declarations, a bill might be prepared in a few days." He certainly had a draft for the protection of basic rights readily at hand; he was the principal author of the Virginia Declaration of Rights of June 1776, the first such American document and the prototype for similar declarations in other state revoluntionary constitutions and for portions of the amendments which eventually became known as the U.S. Bill of Rights.

Elbridge Gerry of Massachusetts responded to Mason's "wish" with a motion that a committee by formed to draft a bill of rights. Roger Sherman was the first to answer with a staple argument of those who opposed a bill of rights: it was unnecessary because such rights were already protected by state declarations of rights. The Convention then voted down the Gerry committee by ten states to none.

Supporters of rapid ratification of the Constitution enhanced their arguments against the need for a bill of rights when their opponents used its absence as an argument against ratification. Some came to regard the amendments as dangerous as well as unnecessary in a governmental system that was asserted to be based on powers expressly delegated in a written constitution. This argument was offered by James Wilson of Pennsylvania less than three weeks after the end of the Convention:

> When the people established the powers of legislation under their separate governments, they invested their representatives with every right and authority which they did not in explicit terms reserve; and therefore upon every question, respecting the jurisdiction of the house or assembly, if the frame of government is silent, the jurisdiction is efficient and complete. But in delegating federal powers, another criterion was necessarily introduced, and the congressional authority is to be collected, not from tacit implication, but from the positive grant expressed in the instrument of union. Hence it is evident, that in the former case every thing which is not reserved is given, but in the latter the reverse of the proposition prevails, and every thing which is not given, is reserved.

He was more succinct in his state's ratification convention:

> If we attempt an enumeration, everything that is not enumerated is presumed to be given. The consequence is, that an imperfect enumeration would throw all implied power into the scale of the government; and the rights of the people would be rendered incomplete

He was joined by Alexander Hamilton of New York who asked "why declare that things shall not be done which there is no power to do." The careers of these two Federalist statesmen, both masters in the expansion of the central government through the use of implied powers, makes their supposed fear that a bill of rights invited the specter of implied powers highly ironic.

On September 26, 1787, while Congress was considering the Constitution which had just been forwarded from Philadelphia, Richard Henry Lee of Virginia argued for a bill of rights:

> It having been found from Universal experience that the most express declarations and reservations are necessary to protect just rights and liberty of mankind from the silent, powerful, and ever active conspiracy of those who govern--And it appearing to be the sense of the good people of America by the various Bills or Declarations of rights wheron the governments of the greater number of the States are founded, that such precautions are to restrain and regulate the exercise of the great powers necessarily given to Rulers--in conformity with these principles, and from respect for the public sentiment on this subject, it is submitted that the new Constitution. . .be bottomed upon a declaration or Bill of Rights, clearly and precisely stating the principles upon which this Social Compact is founded.

By then the large number of Congressmen who had also been members of the Federal Convention had arrived in New York and were successful not only in voting down Lee's motion but in having it and all related debate stricken from the journals.

The hardline Federalist opposition to a bill of rights had the adverse effect of uniting the Antifederalists. The supporters of the Constitution had a unified position. Based on their assumption that they had achieved the best document possible in those times, they argued that the state conventions should ratify the document without delay. Their opponents, on the other hand, objected to the Constitution for a wide variety of reasons. Their situation was vividly described in Cecelia Kenyon's brilliant article on the Antifederalists, whom she called "Men of Little Faith": "All in all, a terrible prospect: the Pope as President, operating from a base in Peking, superintending a series of hangings without benefit of clergy! Or worse!" These were indeed among the countless complaints lodged against the Constitution.

The lack of a bill of rights drew the Constitution's opponents together: the true believers such as George Mason and Thomas Jefferson whose concern was the protection of the rights of man were endangered, and the state's righters such as Patrick Henry and George Clinton whose concern was that the authority of their states (Virginia and New York) was jeopardized by the creation of a stronger national government. "There is no declaration of rights" were the first words of Mason's broadside "Objections. . . to the Federal Constitution," Published only a few days after the Convention adjourned. Jefferson wrote that "a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse or rest on inference."

Ratification by the states proceeded easily until the spring of 1788, when Massachusetts ratified while insisting that a bill of rights must be added **after** the Constitution was in effect. This became the Federalist strategy from then on, including the key states of Virginia and New York. Partick Henry protested:

> There is some small possibility, that should we follow the conduct of Massachusetts, amendments might be obtained. There is some small possibility of amending any Government; but. . .shall we abandon our most inestimable rights, and rest their security on a mere possibility. [Is] your rage for novelty so great, that you are first to sign and seal, and then to retract. Is it possible to conceive a greater solecism? . . . You agree to bind yourselves hand and foot--for the sake of what?--Of being unbound. You go into a dungeon--for what? To get out. Is there no danger when you go in, that the bolts of federal authority shall shut you in?

Despite Henry's oratory, the Virginia convention voted 99-80 against prior amendments, and then 89-79 to ratify the Constitution, the tenth state to do so.

James Madison was among those Federalists who had argued that a bill of rights was superfluous, until he became convinced in the Virginia convention that ratification could not be achieved without a concession. While campaigning against Antifederalist James Monroe for election to the first U.S. House of Representatives, he pledged that "it is my sincere opinion that the constitution ought to be revised, and that the first Congress meeting under it, ought to prepare and recommend to the States for ratification, the most satisfactory Provisions for all essential rights." He retained doubts about "parchment barriers" that would be unable to withstand "overbearing majorities," he was attracted by the recognition that amendments "will kill the opposition everywhere and by putting an end to disaffection to the Government itself, enable the administration to venture on measures not otherwise safe." He added that "it is certainly best that they should appear to be the free gift of the friends of the constitution rather than to be extorted by its enemies." Further, amendments would isolate any Antifederalist whose goal was "subverting the fabric . . . if not the Union itself.

Madison was frustrated by the lack of interest by other Congressmen. His fellow Federalists wanted to focus on more pressing issues such as Hamilton's economic programs and the establishment of the federal court system. Too many of the Antifederalsits who had previously been so adamant about the need for amendments seemed now to be more interested in being able to say "I told you so," when the Federalists failed to provide the promised amendments. In his first inaugural address, March 4, 1789, President Washington urged Congress to provide amendments, and he prodded them later at Madison's request.

Madison submitted nineteen amendments "to limit and qualify the powers of Government by excepting out of the grant of power those cases in which the Government ought not to act, or to act only in a particular mode," then waited impatiently for Congress to respond. On July 21 he "begged the House to indulge him" by considering his amendments. A select committee was finally formed, but its chairman argued that Congress was too busy to consider the amendments. After Madison was forced to "beg" once again for action, the committee reported on July 28, followed by intense and angry debate in August. Congressman Elbridge Gerry even warned of the danger of dueling over the issue. The Senate trimmed the list to the twelve amendments that were submitted to the states for ratification on September 25, 1789. Ten of these amendments became part of the Constitution on December 15, 1791, following Virginia's ratification. Virginia delayed so long because Patrick Henry tied up the legislature with his continual opposition to the amendments.

One of the "lost" amendments, among the twelve which were submitted in 1789, became part of the Constitution two centuries later, in **1992**. Ratified as the Twenty-Seventh Amendment, it requires that an intervening election must occur before members of Congress could receive any salary increase which they had approved for themselves. Voters must have the opportunity to "vote the rascals out" before Congressmen could reap the benefits of salary legislation. Despite its heritage, this amendment will presumably not be regarded as part of the Bill of Rights.

Ironically, early members of Congress seem for more than half of the history of the Bill of Rights to have been correct in their assessment that it was not needed. Until the Twentieth Century, the Bill of Rights applied only to the central government--so its influence was **very limited** in the era before world wars and world depression encouraged the growth of a massive central government. The Bill of Rights has loomed large in American history only after its incorporation, through the Fourteenth Amendment, enabled the amendments to limit local governments as well as the national government. There is telling historiographical evidence of the amendments' relative importance in early American history. The first history of the Bill of Rights was published in 1955, Robert A. Rutland's The Birth of the Bill of Rights, 1776-1791[1]

An understanding of two major constitutional principles is necessary to appreciate the historical significance of the Bill of Rights. Both principles are designed to protect citizen liberties by placing limits on the potentially awesome power of government. The first, separation of powers, involves assigning different responsibilities to the three branches of government to guard against any one becoming so powerful that it would subvert citizen liberties. The second principle, federalism, involves the vertical division of governmental power and responsibility between the national goverment and state governments. This innovative design for government has had a significant impact on the relationship between the citizen and government since 1791, when the Bill of Rights was added to the Constitution.

Following the decision in Marbury v. Madison in 1803, the courts, exercising the power of judicial review, were viewed as the branch of the national government that could appropriately examine instances when actions of the executive or legislative branches were challenged as violating those citizen liberties enumerated in the Bill of Rights. Soon thereafter the U.S. Supreme Court was also accorded the authority to determine whether state and local governments had acted in violation of the Constitution. Initially, however, the principle of federalsim was interpreted by the U.S. Supreme Court so that the liberties in the Bill of Rights only guaranteed citizens protection against the National government--not state and local governments. For protection against actions of the latter governments, citizens must look to their state constitutions and the rulings of state courts. Therefore states were able to deny liberties to their citizens even when citizens were protected from such abuse by the national government.

CHAPTER I

FUNDAMENTAL CONCEPTS

OVERVIEW - SUBSTANCE AND SEQUENCE

This section includes four important lessons. Students must understand these concepts if they are to comprehend fully the role of the Constitution and the Bill of Rights in American history and government. Teach these lessons early in the year.

The lessons begin with two concepts, government and law, that are generally understood by junior high school students. Therefore, these lessons may be taught on the very first days of a school term; they benefit from the proposition that students will be interested in and willing to learn more about subjects that are already familiar to them.

These two initial lessons provide a necessary foundation that will enable students to comprehend a crucial understanding that is taught in lesson number three--the Constitution as a higher law. If the role of the Constitution in our society is to have meaning for students, they must learn that the written constitution is the fundamental law and it is superior to ordinary laws passed by legislatures. This background provides a foundation for the final lesson in the chapter, an examination of the rights and liberties enumerated in the Bill of Rights. These are liberties that opponents of the new constitution thought were so important that they would not vote to ratify the constitution until they were assured these liberties would be added to the fundamental document.

LESSONS IN THIS CHAPTER

I - A. WHAT IS GOVERNMENT?

I - B. THE FUNCTIONS OF LAW

I - C. THE CONSTITUTION IS THE SUPREME LAW

I - D. THE BILL OF RIGHTS

The addition of the Fourteenth Amendment to the Constitution in 1868 provided a means for holding state and local governments to the limitations enumerated in the Bill of Rights. The relevant part stated: "nor shall any State deprive any person of life, liberty, or property, without due process of law. . ." This "due process of law" clause became the vehicle for changing the rules of the game in American constitutional law. However this process took many years to accomplish and it did not begin until many decades after the Fourteenth Amendment was added to the Constitution.

The 1925 decision in Gitlow v. New York initiated the process. Following this decision the process, known as selective incorporation, proceeded as the U.S. Supreme Court declared that First Amendment provisions of Speech, Press, Assembly, as well as Establishment and Free Exercise of Religion were fundamental liberties that limited governmental actions at all levels.

These decisions were expanded in the 1950s and 1960s when the U.S. Supreme Court added the procedural guarantees in the Fourth, Fifth, Sixth, and Eighth Amendments to the list of liberties that citizens could claim as protections against the actions of state and local governments.

Two additional extensions of the provisions in the Bill of Rights are noteworthy. One involves the Ninth Amendment provision that states: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." Thus citizens may have other rights in addition to those enumerated in the Bill of Rights. In 1965 the U. S. Supreme Court, using portions of the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments, announced that a right to privacy exists. Because this word is not specifically mentioned in the Constitution, and because privacy was to be honored by all levels of government, the proclamation of the new right is call "Incorporation Plus."

The second extension concerns students. In Tinker v. Des Moines (1969) a majority of the U.S. Supreme Court proclaimed that students have constitutional rights to freedom of speech and expression. However, since these rights must be exercised without disruption of the educational process, the extent to which students rights are guaranteed continues to be the subject of court decisions.

I - A. WHAT IS GOVERNMENT?

OVERVIEW of the lesson: Students need a framework that will help them to understand how the components of the political system are interrelated. Government is a fundamental concept that will assist students to place the parts of the political system into a meaningful relationship to one another. The lesson begins with an inductive exercise. Students name people who work for the government and governmental offices. These responses are listed in one of four governmental categories or a private sector category. Students are to identify the governmental function represented by the entries in each category. Next, students identify examples of these functions in two hypothetical scenerios. Finally, a deductive exercise will determine whether students have learned the major functions performed by people who work in government.

Students who complete this lesson successfully will be able to identify the major functions performed by people in government: (A) law and rule making, (B) governing or administering (enforce, carry out or see that laws are followed, including courts), (C) insuring the safety of individuals or the nation (in both domestic and foreign affairs), and (D) acquiring, regulating and allocating resources (taxation, regulation or subsidization of economic activities). They will also be able to identify jobs that are performed by people who work in the private sector.

The **PURPOSE** of this lesson is to teach students what people in government do. Students will advance from a view of government that focuses on specific and tangible events, people, and objects, to an abstract conceptualization with a focus on the entire society. In this process the student will realize that people in government carry out the four functions for which government exists.

NECESSARY PREPARATION

1- On the board, place the numbers 1, 2, 3, 4 and 5 at the top of five columns.

2- Determine whether you want to write the information on the board, or whether you want one of the best students to write the information in the column that you tell him/her to use.

3 - Duplicate copies of **"LEARNING ABOUT THE FUNCTIONS OF GOVERNMENT"** and **"IDENTIFYING FUNCTIONS OF GOVERNMENT."**

4 - Prepare a list of 10 governmental functions that will be used in Step 3 of **CLOSING THE LESSON.**

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Inform students that during the lesson they are to identify what role or function performed by people working in government is represented by the names and jobs listed in each column.	Listen to instructions; ask questions for clarification.
2 - Tell students that this lesson will help them to develop an inductive skill; that is they will be asked to identify the title that describes a category by looking at some of the parts of the category.	Listen to instructions; ask questions for clarification.
3 - Ask students to name people who work for government and positions (jobs) held by people who work for government.	Students volunteer names of people or specific positions that are governmental.

4 - As students provide responses, these should be written on the board under the appropriate column. NOTE: the category names listed under the columns will be used to determine the entries in the columns and they will not be written on the board until the students identify them in the next step (Step 5) of the Sequence of Instruction.

The information listed on the board will look like the following:

1	2	3	4	5
Senators	President	Soldier	The IRS	Gas station Attendant
Local council	Mayor	FBI (national)	Social Security	
State legislator	Governor	Paramedics	Street Dept.	
House of Reps	Sec. of State	The CIA	Teacher (Public School)	Teacher (Private School)
	Justice Rehnquist			
	Police (enforce laws)	Police (Service duties, help)	Aid to dependent children	
LAWMAKING	EXECUTIVE	DEFENSE AND SAFETY (Security)	ACQUISITION & ALLOCATION OF RESOURCES	PRIVATE SECTOR

TEACHER	STUDENTS
5 - Encourage the students to identify the functions. If they have difficulty, provide them with additional examples from the chart in Step 4.	Attempt to identify the function represented by the listing in each category. Continue to volunteer names and positions of governmental workers until each category is identified.
6 - Ask how you can tell if someone works for government.	Students identify government employees as those who are paid with tax money
7 - Hand out the page entitled: LEARNING ABOUT THE FUNCTIONS OF GOVERNMENT. Inform students that they are to answer the questions listed under "WHAT DO PEOPLE IN GOVERNMENT DO?" They are also to do the word challenges.	Read the two paragraphs and answer the question listed under "WHAT DO PEOPLE IN GOVERNMENT DO?" and complete the word challenges.
8 - Ask students to read their answers.	Students respond by identifying actions that illustrate governmental functions and completion of word challenge.

From the reading students should be able to identify the following examples of governmental functions:

A. There are two examples of lawmaking. One law is passed to raise taxes and the other authorizes the payment of money to the families of people who are asked to serve in the army.

B. There is one example of governing or administering. This involves the President directing a member of his staff to ensure that payments are made to the families who are authorized to receive them.

C. Two examples of providing security for the nation are included. These involve the building of equipment to protect Atlantis against an attack by another nation and the reference to raising an army.

D. There are two examples of the acquisition and allocation of resources. One is the law that requires the people to pay taxes (acquisition) and the other provides payment to the families of military personnel (allocation).

CLOSING THE LESSON

TEACHER	STUDENTS
9 - Have students read the paragraphs entitled "IDENTIFYING FUNCTIONS OF GOVERNMENT". Then they are to write answers that show that they can identify governmental functions.	Read the three paragraphs. Then, write answers to the "WHAT DO PEOPLE IN GOVERNMENT DO?" section.
10 - Have students orally share their answers, or have them handed in for grading, as you choose.	Share answers orally or hand in the written answers, as determined by the teacher.

Based on the reading, the following are responses that can be provided:

A - There is ONE example of LAWMAKING. The council is requested to appropriate more money for street repairs.

B- There are TWO examples of GOVERNING OR ADMINISTERING. The mayor is asked to see that the street department does its job efficiently. The policeman gave James a ticket.

C - There are TWO examples of INSURING SAFETY. The paramedics came to help James and the policeman called the ambulance on his radio.

D - There is ONE example of RESOURCE ACQUISITION AND ALLOCATION. This involves an attempt to increase the money available to repair streets.

TEACHER	STUDENTS
11 - Inform students that their last evaluation will be a deductive exercise. Functions will be listed on the board and you will read the names or titles of 10 people who work for government (or you will describe the job that they perform). Students will need to decide which function is involved. Some of the people or jobs listed will be ones that were not included in the list mentioned in the lesson.	Prepare to write answers when the names and jobs are read.
12 - Read names and jobs from Examples in Number 4 above plus others that you wish to include.	Write which of the four functions is illustrated by each of the 10 examples.
13 - Ask students to hand in their answers for grading.	Hand in written answers.

LEARNING ABOUT THE FUNCTIONS OF GOVERNMENT

The legislature of a nation called Atlantis passed a law that required people to pay taxes so that equipment could be made for use in protecting them in case they were attacked by another country.

The legislature also passed a law that required the payment of money to families of men and women who were asked to leave their jobs to serve in the army. The President of Atlantis directed one of his staff to check the records to be sure that the money was paid to these families.

WHAT DO PEOPLE IN GOVERNMENT DO?

Write a sentence about each action described in the story that tells about something that people in government do.

WORD CHALLENGES

Rearrange each of the following sets of words so that they describe something that is done by people who work in government.

laws in make government People and rules.

see Executives followed. that laws are the

IDENTIFYING FUNCTIONS OF GOVERNMENT

James was riding his skateboard down the sidewalk on his way to school. Because he did not want to be late, he decided to cross the intersection while the light was still red. Unfortunately, there was a large hole in the street due to the fact that the street department lacked money to repair all of the streets properly. The rear wheels of James' skateboard fell into the hole and James was sent sprawling into the street. A car traveling through the intesection could not stop in time to avoid hitting James.

At the same time, a policeman arrived. He used his radio to call an ambulance. The paramedics arrived within three minutes. They decided that James had only suffered a bruised leg and that he would not need to go to the hospital.

Since the policeman saw what happened, he did not give a ticket to the driver of the car. He did, however, give James a ticket for crossing the street while the light was red. The driver of the car and James' parents contacted the city council and asked them to increase the money that is allocated for street repairs. They also contacted the mayor and asked him to ensure that the street department was doing its job efficiently.

WHAT DO PEOPLE IN GOVERNMENT DO?

Write a sentence about each activity described in the story which tells something about what people in government do.

I-B. THE FUNCTIONS OF LAW

OVERVIEW of the lesson: An understanding of law and its role in society represents a central focus for a student's developing knowledge about the political world. Young children know more about laws and key functionaries in the legal system than they know about other aspects of the governmental process. As children mature they move through stages of understanding legal development. They progress from one stage to another in a sequential pattern. (For a discussion of these stages see the explanation following Step 5 in the Sequence of Instruction.) Because most adolescent students have a stage three understanding of legal development, this lesson is designed to move them to stage four. This will be accomplished by asking students to answer a series of questions about the purpose of laws and then to serve in the role of a law maker in order to discover another purpose that laws serve in the society.

Students who complete this lesson successfully will realize that laws serve not only as a means of control to prevent disorder in the society, but laws also serve an educational function to teach and to guide people to think and to act in ways that those who make the laws believe people should think and act.

The **PURPOSE** of this lesson is to assist students to move from their typical, stage three understanding that laws affect the entire society to the next stage of understanding which is that laws teach people how they are expected to behave. (This stage of understanding is needed as a prerequisite to comprehending the significant role performed by the Constitution in American society.)

NECESSARY PREPARATION

Provide copies of the **WHY DO WE HAVE LAWS?** and **YOU BE THE LAWMAKER** handout, or prepare to use an overhead projector to display this page.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Inform the students that this lesson is about "laws." They will learn that laws have several important purposes.	Listen to instructions.
2 - Ask students to explain "Why do we have laws?" Direct them to write an answer.	Write an answer.

TEACHER	STUDENTS
3 - Ask students to volunteer their answers. Write representative answers on the board.	Students volunteer answers.
4 - Next, have students explain "What would happen if there were no laws?" Direct them to write an answer.	Write an answer.
5 - This time ask selected students to share their responses. Write selected answers on the board.	Students share their responses.

Responses to the question "What would happen if there were no laws?" will demonstate that most students have moved beyond an **egocentric** (Stage One) perception of law where they see laws as only affecting themselves. Most will also have passed the **reciprocal** view (Stage Two) that holds laws may also serve to protect or to punish other people with whom the student is familiar.

The answers of most students will emphasize the constraining, coercive side of law by stating that law serves as a means of control to prevent disorder in society. This means that they recognize the **systemwide** perception (Stage Three) that the law's impact expands to include the entire nation, or at least a community that includes persons with whom the student is unfamiliar. (For an expanded discussion of this subject, See: Stanley W. Moore, James Lare and Kenneth A Wagner, Chapter 6, "Emerging Sensitivity to Law and Morality," in The Child's Political World: A Longitudinal Perspective. New York: Praeger, 1985.)

---

6 - Point out answers that mention the systemwide perception of the impact of law. Be certain that students recognize this systemwide perception that laws affect the entire nation, or at least a community that includes persons with whom the student is unfamiliar.	Students verbalize the systemwide impact of the laws.

With your help, students are now ready to recognize that laws may have social goals. Laws may serve an educational function. They may be used to teach and to guide people according to behavior patterns suggested by Social Norms. You can help students understand this function of law by using the handout labeled: "WHY DO WE HAVE LAWS?" and "YOU BE THE LAW MAKER."

TEACHER	STUDENTS
7 - Instruct students to read the handout and decide what they think the council should do.	Read "Why do we have laws? and "You be the law maker." Write what decision they think the council should make.
8 - Ask students to share their answers.	Explain what they believe the council should decide.
9 - Ask students to explain why they reached their decision. Write representative answers on the board.	Students explain the reasoning for their answer.
10 - Point out answers that identify positive reasons for the proposed law, e.g., the children should not be trapped in low-paying jobs in the future or children need to learn how to read, write, and do math problems. Also note any answers that describe the educational function of teaching and guiding people to behave according to the norms of society, e.g., "people need to know that children can't make decisions, so adults need to protect them."	Ask questions as needed for clarification and under standing.

CLOSING THE LESSON

TEACHER	STUDENTS
1 - Ask students to write a letter to a friend from another country. In the letter students are to explain "why we have laws."	Write answers. Hand in answers.

Students' answers should distinguish between laws that are designed primarily to serve as a means of control to prevent disorder in society, and those laws whose primary function is to teach and guide people to think and to act in ways that the law makers believe are appropriate.

WHY DO WE HAVE LAWS?

Laws not only help to keep order in the country but they teach us what we are expected to do. Laws teach and guide people to think and to behave in ways that those who make the laws believe people should think and behave.

YOU BE THE LAW MAKER

Suppose that some people living in a city decide that they would no longer allow their children to attend school after they were 12 years old. Instead they agreed that their children would work in the factory to increase the income for their families. They would put money into a fund for each child and the children would be given their share of the money when they reached the age of 18.

Most of the members of the city council, however, felt that it would be better for children to learn to read, write and do basic math problems. Therefore, they passed an ordinance (a law) that required children to attend school until they completed the eighth grade and they could pass an examination showing that they could do these things.

If you were a member of the council, what decision would you make? Why?

I - C. THE CONSTITUTION IS THE SUPREME LAW

OVERVIEW of the lesson: This lesson is a sequel to Lesson I - B. Thus, initially the teacher should briefly review Lesson I - B and highlight the educational function that is performed by laws. Next, a brief reading selection will assist students to recognize the Social Contract concept that undergirds the role of the Constitution in American society. The significant role of the Constitution as Supreme Law is then amplified as students serve as a "Judge" while responding to the circumstances presented in a hypothetical scenario.

Students who complete this lesson successfully will understand the distinction between procedural and substantive components of the Constitution and the Bill of Rights. This will assist them to develop criteria for evaluating whether a law is "just" or "fair."

The **PURPOSE** of this lesson is to enable students to comprehend more fully the role of the Constitution in the American system of government. This conception is a necessary requirement for understanding how governments function in the United States.

NECESSARY PREPARATION

1 - Review Lesson I - B. titled **THE FUNCTIONS OF LAW.**

2 - Duplicate copies of the student handout.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Inform students that in this lesson they will learn that the Constitution is a very special type of law. They will learn why the Constitution is so important to each of us in our country.	Listen to information.
2 - Ask students for responses to the question: "What would happen if there were no laws?" (Identify and write on the board those answers that go beyond ego-centric and reciprocal views of law discussed in Lesson I - B and focus instead on Stage III, the systemwide impact of law, such as preventing chaos in society.)	Provide responses.

TEACHER	STUDENTS
3 - Ask students to give answers to the question: "Why do we have laws?" (Identify and write on the board, answers that suggest an educational function for laws, such as those that teach or guide people according to behavior patterns suggested by social norms.	Provide answers.
4 - Provide students with the **HANDOUT**. Instruct them to read the paragraph headed **THE CONSTITUTION IS THE SUPREME LAW**. Ask them to identify the agreement (SOCIAL CONTRACT) that is described.	Read the paragraph. Identify the agreement that is described.
5 - Ask students to explain the agreement that is described in the reading.	Students volunteer answers.

-- The **SOCIAL CONTRACT** concept might be taught as follows:

A - Elected representatives from each of the states decided that they wanted to be ruled by the same government;

B - At the Constitutional Convention, these delegates decided the kind of government they wanted and they decided that the government should be controlled by the people.

C - When the representatives in state conventions voted to approve the Constitution--that is to ratify the work done by the Framers at the Constitutional Convention--it became the highest and therefore the most important law in the country. It became the supreme law of the land because representatives of the people who are to be governed by it gave their consent. Finally, Article VI of the Constitution says that the Constitution shall be "the supreme Law of the Land." This is what was wanted by the people who wrote the Constitution and agreed to by those who approved of it in the state conventions.

---

6 - Instruct students to read **YOU BE THE JUDGE**. Ask students to write answers to the questions listed at the end of the selection.	Read the paragraphs and write answers to the questions.

TEACHER	STUDENTS
7 - Have some students read their answers. Emphasize the procedural components of the process: (A) Elected representatives, (B) heard arguments from opposing parties, and (C) a majority vote was used to pass the law. Therefore, the law would seem to be just because the lawmaking process permitted the people to express their views before a decision was made.	Students volunteer to read their answers.
8 - Suggest the following change: Suppose the same procedures were followed, but a majority of the council decided to pass a law that required children to go to work when they became 12 years old. Would this law be "just?" Why? Why not?	Listen to the change. Write their response.
9 - Ask selected students to share their answers.	Selected students share their answers.

-- In the earlier example, the city council followed PROCEDURES that are appropriate in a democratic decision making process; the decision seemed fair and just. In the change suggested here, although the same procedures were followed, the SUBSTANCE (or content) of the law may not be just or fair. For example, today we would recognize that a law requiring children to go to work at the age of 12 would violate child labor laws--laws that have been ruled to be constitutional. Therefore, for a law to be fair and just, it must not only be made by following the PROCEDURES that are outlined in the Constitution, but, in addition, the SUBSTANCE of the law itself cannot violate the rules of fairness that are expressed or implied in the Constitution.

In summary, constitutional concepts that are SUBSTANTIVE and PROCEDURAL may be explained as follows:

Procedural:

1 - The Constitution includes a description of procedures concerning how the laws should be made and enforced, such as:
  - -- people must be represented in the lawmaking process,
  - -- the government must follow agreed upon rules for treating people who have been accused of a crime.

Substantive:

2 - The Constitution also includes rules of fairness concerning the substance of the laws themselves, such as:

-- the laws must treat all people equally, regardless of their religion or race.

TEACHER	STUDENTS
8 - Suggest to students the need to know what the Constitution and its Amendments, especially the Bill of Rights, say concerning whether a law is just and fair as well as what they say about the procedures that must be followed when a law is enforced.	Listen and ask questions for clarification.

CLOSING THE LESSON

Write the following questions on the board: Ask students to write answers to be handed in for grading. A - How is the Constitution different from other laws? B - Why is the Bill of Rights so important in our country?	Write answers and hand in for grading.

Responses such as the following will indicate that the students recognize the significance of the Constitution and the Bill of Rights.

The Constitution is the Supreme Law of the land. No other laws should violate or contradict the guidelines stated in the Constitution.

The Bill of Rights includes many substantive rules that are used to determine whether laws are just and many procedural rules that are used to determine whether people are being treated fairly by the government.

THE CONSTITUTION IS THE SUPREME LAW

When our Constitution was approved by representatives of the people after it was written in 1787, they agreed that the Constitution would become the most important law in the United States. The Constitution which they ratified was described in Article VI as "the supreme Law of the Land." They decided that all other laws should follow the procedures that are described in the Constitution and that they should follow the substance or rules of fairness that are included in the Constitution.

YOU BE THE JUDGE

Suppose that some people living in a city decided they would no longer allow their children to attend school after they were 12 years old. Instead, they agreed that the children would work in the factory to increase the income for their families. Money would be put into a fund for each of the children and the children would be given their share of the money when they reached the age of 18.

Other people did not think this was a good plan so they asked the city council to investigate. The council invited people who favored the plan and who opposed the plan to present their arguments. Following this, a majority of the members of the city council, who had been elected by the people living in the city, passed a law that prohibited families from taking their children out of school until they had either completed the eighth grade or they were 16 years old.

Do you think this law was made in a proper manner? Is it a "just" or "fair" law? Give reasons for your answers.

I. - D. THE BILL OF RIGHTS

OVERVIEW of the lesson: It is probable that the Constitution would not have been ratified without the promise that a Bill of Rights, listing protections that people would have against the power of the national government, would be proposed by the First Congress. Therefore, these liberties are very important. Initially, in this lesson students will list rights that they believe should be included in a Bill of Rights; then, they will examine the provisions of the first ten Amendments to determine which of their suggested rights are included.

Students who complete this lesson successfully will recognize the substantive and procedural rights that are included in the Bill of Rights.

The **PURPOSE** of this lesson is to inform students about the important liberties listed in the Bill of Rights, as well as teach students the difference between a substantive right and a procedural right.

NECESSARY PREPARATION

1 - Determine the location of the Bill of Rights in the student's textbook or prepare a handout that presents the Bill of Rights.

2 - Determine how to divide the class into 10 groups for providing answers to questions included on the **OUTLINE OF THE BILL OF RIGHTS** handout.

3 - Duplicate copies of the **OUTLINE OF THE BILL OF RIGHTS** and **CURRENT DAY CONTROVERSIES INVOLVING THE BILL OF RIGHTS**.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Ask students what subjects they believe should be included in a Bill of Rights. Write responses on the board.	Volunteer answers to the question.
2 - Provide students with either a prepared handout that presents the Bill of Rights or inform them where they can locate the Bill of Rights in their textbook. Hand out the **OUTLINE OF THE BILL OF RIGHTS**. Ask each of the ten groups to provide answers to one of the ten amendments.	Listen to instructions. Then fill in the blanks in the outline for the amendment that is assigned to their group.

TEACHER	STUDENTS
3 - Ask students to identify subjects listed in the amendment assigned to them that are also listed on the board.	Match items listed on the board with those listed in their amendment.
4 - Ask students which subjects match. Circle subjects on the board as students identify a match. Place the number of the Amendment next to the subject.	Volunteer answers of subjects listed on the board that are also included in the Bill of Rights.
5 - Ask each group to share the words they listed to fill in the blanks in their amendment.	Each group shares the words they used to fill in the blanks in their amendment.

OPTIONAL: Step 5a may be used to instruct students about the distinction between substantive and procedural rights. See Lesson I - C. for an extended explanation of these terms.

5a - Have students identify which circled items refer to substantive rights and liberties and which describe procedural rights.	Determine whether the items circled on the board are substantive or procedural.

Liberties included in the first three Amendments such as freedom of speech, press and religion, concern substantive liberties. They are prohibitions on the content of laws that may be enacted by Congress.

The rights enumerated in Amendments Four through Eight concern procedural issues. They describe procedures that must be followed by the government as guarantees to citizens who are suspected of involvement in illegal activities.

Amendments Nine and 10 do not enumerate rights and liberties. Therefore, they may be discussed separately. Amendment Nine was added in response to arguments presented by people such as Alexander Hamilton who stated that adding a Bill of Rights to the Constitution would be dangerous because some rights might not be listed and thus people might be denied these rights. Amendment 10 was included to ensure that the

The following are suggested responses to the questions on the **CURRENT DAY CONTROVERSIES** worksheet:

1 - Amendment I = the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
- SUBSTANTIVE

2 - Amendment I = abridging the freedom of the press - SUBSTANTIVE

3 - Amendment VI = In all criminal prosecutions, the accused shall . . . have compulsory process for obtaining witnesses in his favor - PROCEDURAL

4 - Amendment VIII = nor cruel and unusual punishments inflicted.
- PROCEDURAL

5 - Amendment VI = In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury - PROCEDURAL

6 - Amendment I = Congress shall make no law respecting an establishment of religion - SUBSTANTIVE

7 - Amendment III = No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner - SUBSTANTIVE

8 - Amendment V = nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;
- PROCEDURAL

9 - Amendment VI = In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence.
- PROCEDURAL

10 -Amendment IV = The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,
- PROCEDURAL

new, more powerful national government would only be able to use powers that were specifically given to it in the Constitution. This was done to ensure that the national government would not become too powerful.

---

6 - Refer to items listed on the board that are not circled. Ask students to consider why they are not listed in the Bill of Rights. Are they found in other parts of the Constitution?	Evaluate why these subjects are not listed in the Bill of Rights. Share insights with the class.
7 - Ask students if they know why the specific rights and liberties listed in the Bill of Rights were included.	Respond with "YES" or "NO."

Inform students that the rights listed in the Bill of Rights are among those rights that governments may be able to guarantee to their citizens. Guarantees such as providing a job for everyone, or providing adequate housing for everyone are among those guarantees that governments are not able to fulfill. Perhaps that is why they are not included in the Bill of Rights.

CLOSING THE LESSON

TEACHER	STUDENTS
Instruct students to complete the **CURRENT DAY CONTROVERSIES** handout. Hand it in for grading.	Complete WORKSHEET and hand it in for grading.

OUTLINE OF THE BILL OF RIGHTS

Amendment 1 = Congress can't limit the freedom of religion, __________, __________, the right of people to __________, and to ask the government ______________________________

Amendment 2 = Because a free State needs a national guard, the people have the right to ________________.

Amendment 3 = Soldiers are not to be kept in people's homes during peacetime without ________________, nor during wartime unless as ________________.

Amendment 4 = People are to be protected against unreasonable ________ __________, and __________ may not be issued unless they are supported by probable cause.

Amendment 5 = People may not be tried __________ for the same crime; nor can they be required in a criminal case to testify against ________ ______; nor have their __________, liberty or property taken without due process of law; nor have their ________________ taken without being paid a fair price for it.

Amendment 6 = When people are accused of a crime, they have the right to a __________ trial, by an impartial ________, to be __________ about the charge against them; to hear the __________ who testify against them; to be able to have __________ to testify for them, and they have the right to a __________ to help defend them.

Amendment 7 = In a civil case that involves more than ________ dollars, a person has the right to a ________ trial.

Amendment 8 = A person may not be required to pay __________ that is too much, nor be required to pay __________ that are too high, nor be punished in a way that is __________ and __________.

Amendment 9 = There may be some additional ______________ that people have that are not mentioned in the Constitution.

Amendment 10 = If a __________ is not given to the National ________ ________, if the __________ are not told they do not have that power, then the power belongs to the __________ or to the __________.

CURRENT DAY CONTROVERSIES INVOLVING THE BILL OF RIGHTS

Identify the provision in the Bill of Rights by (A) listing the Amendment number and (B) listing the wording in the Amendment that would be used to decide the following controversies. Also indicate (C) whether the issue concerns a SUBSTANTIVE or a PROCEDURAL right.

1 - Police arrest demonstrators when they refuse to leave a public area where they gathered to protest against the local mayor.

2 - The president of a large state university fires the editor of the student newspaper after the newspaper published an advertisement that called the university president a crook.

3 - An accused person asks that a witness to the robbery for which he is on trial be required to testify, even though the witness refuses to appear at the court.

4 - A state passes a law providing that persons found guilty of possessing a gun illegally be sentenced to life imprisonment, even if it is a first offense.

5 - A person, found guilty of armed robbery, claims the jury who convicted him was biased because they were all over 60 years old.

6 - A family objects to the school song for a public school because they say it forces them to violate their religious beliefs. It calls upon "Nature's God" to help them win their athletic contests.

7 - A state governor orders several owners of large houses to allow members of the state national guard to stay overnight in their homes for a limited period of time.

8 - A man accused of killing several people with an axe was found not guilty at trial. Because most people in the community felt he was guilty, he was ordered to stand trial a second time.

9 - An accused person is too poor to hire an attorney to defend him at his trial.

10 - Police officers enter a doctor's office and search his files for evidence that is needed to charge a suspect with using drugs.

CHAPTER II

ROOTS OF THE BILL OF RIGHTS

OVERVIEW - SUBSTANCE AND SEQUENCE

There were several important antecedents to the Bill of Rights. The natural rights theory of John Locke supplied a philosophical rationale. English documents such as the Magna Carta (1215) and the English Bill of Rights (1689) contained provisions that appealed to those who wished to add a list of rights to the U.S. Constitution. Some state constitutions contained a list of guarantees against repressive state action. These important ingredients comprise the subject matter of the first three lessons in the Chapter. Lessons II - A. and B. demonstrate that many ideas included in the Bill of Rights were "borrowed" from English sources. Lesson II - C. helps students to examine the components in the Virginia Declaration of Rights, which served as a prototype for the Bill of Rights. In this lesson students learn to distinguish basic principles, which involve fundamental ideas, from enumerated rights, which are ideas about specific protections and rules to which citizens are entitled.

These documentary antecedents, however, were not sufficient to convince the members of the Constitutional Convention that a bill of rights should be added to the Constitution. It remained for arguments presented by men like George Mason (who feared that the new national government would abuse power) and James Madison (a strong supporter of the new government, but who became convinced that it might not survive unless the First Congress proposed amendments designed to protect citizen liberties) to formulate a proposed Bill of Rights. The final two lessons in the Chapter present the positions taken by the Federalists and the Anti-Federalists as well as the contributions provided by George Mason and James Madison.

LESSONS IN THIS CHAPTER

II - A. JOHN LOCKE AND NATURAL RIGHTS

II - B. ENGLISH INFLUENCES ON THE BILL OF RIGHTS

II - C. WHAT IS A PRINCIPLE? WHAT IS A RIGHT? A LESSON ON THE VIRGINIA DECLARATION OF RIGHTS.

II - D. THE ANTI-FEDERALISTS - "THE LIBERTIES MUST BE ENUMERATED"

II - E. BIOGRAPHIES OF THE FRAMERS: GEORGE MASON AND JAMES MADISON

II - A. JOHN LOCKE AND THE THEORY OF NATURAL RIGHTS

OVERVIEW of the lesson: The Framers of the Bill of Rights were influenced by the ideas of Europenan political philosophers. One important philosophical idea was John Locke's theory of natural rights. The introduction to this lesson uses an advanced organizer based on the familiar term "borrow" which is used to illustrate the fact that many of our ideas are borrowed from others. Students trace the ideas borrowed from John Locke as they study selections from his Second Treatise on Government, the Declaration of Independence, and the First Amendment.

Students who complete this lesson successfully will understand that ideas are influential. Specifically they will recognize that John Locke's idea of natural rights was borrowed by the writers of the Declaration of Independence and the Bill of Rights.

The **PURPOSE** of this lesson is to teach students that John Locke's theory of natural rights influenced the writing of the Bill of Rights.

NECESSARY PREPARATION

Duplicate copies of the following handouts:

1 - **WHAT INFLUENCES OUR IDEAS?**
2 - **JOHN LOCKE AND HIS THEORY OF NATURAL RIGHTS**
3 - **AN APPLICATION OF JOHN LOCKE'S THEORY**
4 - **LESSON EVALUATION**

SEQUENCE OF INSTRUCTION

ADVANCED ORGANIZER

TEACHER	STUDENTS
1 - Write the word "Borrow" on the board. Ask students to use the word in a sentence.	Provide sentences that use the word correctly.
2 - Provide students with the handout titled: WHAT INFLUENCES OUR IDEAS? Ask students to select an idea. Instruct them to write this idea in the large caption next to the picture of the "thinker."	Identify an idea. Write the idea in the caption.

An example of an idea might be: The earth is round.

TEACHER	STUDENTS
3 - Ask students to fill in the small captions with statements that describe what they know about the idea.	Fill in the small captions with statements that describe what they know about the idea.

The idea "the earth is round" might be described with: The planet rotates on its axis; there is both a night and a day during a 24 hour period; the earth rotates around the sun.

TEACHER	STUDENTS
4 - Ask students to share what they have written in the captions.	Volunteer answers.
5 - Ask students to identify the source of their ideas. Did they come from what they had seen or heard from someone else? If so, these ideas were BORROWED.	Share the source of their ideas. Identify ideas that were borrowed from someone else.

TEACHING THE CONTENT

TEACHER	STUDENTS
6 - Explain that this lesson concerns how the men who wrote the Bill of Rights were were also influenced by the ideas of other pepole. Specifically, we will learn how an important idea of John Locke influenced the ideas about government that were held by the men who wrote the Bill of Rights.	Listen attentively.
7 - Write "NATURAL RIGHTS" on the board. Explain that students will be expected to understand what this term means and how it is related to ideas in the Declaration of Independence and the Bill of Rights.	Listen and ask questions for clarification.
8 - Ask students to suggest a definition of the phrase "Natural Rights." Be certain they recognize that the term refers to basic rights which it is agreed all people have equally--such as the right to life.	Volunteer a definition of "Natural Rights."

TEACHER	STUDENTS
9 - Hand out the worksheet JOHN LOCKE AND HIS THEORY OF NATURAL RIGHTS. Have students read the description of Locke's theory and answer the questions that follow.	Read the statement and answer the questions.
10 - Ask selected students to share their answers. Be certain they understand the relationship between Locke's statements and the idea of Natural Rights.	Selected students share their answers.

Locke felt that human beings are naturally free and are not to be subject to a government unless they agree to be subject to it. In addition, Locke felt that people have a natural right to acquire property.

11 - Hand out the worksheet titled: AN APPLICATION OF JOHN LOCKE'S THEORY. Have students answer the questions.	Read the selection from the Declaration of Independence and answer the questions.
12 - Ask selected students to read what they have written.	Selected students read their responses.

Students should recognize that the Declaration of Independence also refers to unalienable (natural) rights. The First Amendment states that Congress (government) shall not make laws that prohibit people from exercising such natural rights as free speech, free press, and freedom of religion.

CLOSING THE LESSON

Have students complete the LESSON EVALUATION.

Students will demonstrate a knowledge of Locke's natural rights philosophy if they recognize that the first example would not qualify for a protest. Watering the lawn would not be a natural right because there was a shortage of water due to the lack of rain. In the second situation Locke's theory would support a protest because liberty would be denied to teenagers without justification.

WHAT INFLUENCES OUR IDEAS?

JOHN LOCKE AND HIS THEORY OF NATURAL RIGHTS

John Locke wrote the following in his Second Treatise on government (1688):

> "For no government can have a right to obedience from a people who have not freely consented to it; which they can never be supposed to do, till they are put in a full state of Liberty to choose their Government and Governors, or at least till they have such standing Laws, to which they have themselves or their Representatives, given their free consent, and also till they are allowed their due property...."

Circle the statements below that you feel are expressed in the above passage.

A. People should be free to choose their representatives.

B. Government should protect a person's right to property.

C. The people should obey the government no matter how many of their rights it takes away.

Can you discover an idea in Locke's statement that might be called a "Natural Right"? Explain your idea.

AN APPLICATION OF JOHN LOCKE'S THEORY

The following is an excerpt from the Declaration of Independence:

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."

1 - Do you see any similarities between Locke's ideas and those expressed in the Declaration of Independence?

YES NO

2 - If there are similarities, what are they? Be specific.

____

____

____

____

3 - The following is an excerpt from the First Amendment:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press . . ."

---

4 - Do you see any similarities between Locke's ideas and those expressed in the First Amendment?

YES NO

5 - If there are similarities, what are they? Be specific.

____

____

____

____

LESSON EVALUATION

Based on Locke's theory of Natural Rights, read each of the following hypothetical situations and decide whether or not Locke's theory can be used to protest these actions.

A. It hasn't rained for two years. A local city council passes a law prohibiting the watering of lawns until it rains again.

Would Locke justify a protest? YES NO

Why? ______________________________

____

____

____

____

B. The government has passed a law that will allow the police to put in jail any teenager who looks suspicious at the scene of a crime.

Would Locke justify a protest? YES NO

Why? ______________________________

____

____

____

____

II - B. ENGLISH INFLUENCES ON THE BILL OF RIGHTS

OVERVIEW of the lesson: When writing the Bill of Rights, the authors borrowed ideas that were expressed in English documents such as the Magna Carta and the English Bill of Rights. This lesson's Advanced Organizer uses an exercise that has students establish rules for a new student organization as well as the concepts of bibliography and footnoting to demonstrate how people borrow ideas from others. Then students compare excerpts from the Magna Carta and the Eighth Amendment to discover that the former provided ideas used in the latter. Finally, after reading two sections from the English Bill of Rights, students examine the provisions in the American Bill of Rights to determine which had roots in the former.

Students who complete this lesson successfully will recognize several provisions in the Bill of Rights that contain ideas (principles) that had their origin in the Magna Carta and the English Bill of Rights.

The **PURPOSE** of this lesson is to teach students that, when writing the Bill of Rights, the authors borrowed ideas that were included in English documents.

NECESSARY PREPARATION

1 - Duplicate copies of the following documents:
  READING 1 - ENGLISH INFLUENCES ON THE BILL OF RIGHTS: THE MAGNA CARTA (1215)
  READING 2 - ENGLISH INFLUENCES ON THE BILL OF RIGHTS: THE ENGLISH BILL OF RIGHTS (1689)

2 - Determine the location of the Bill of Rights in the student's textbook or prepare a handout that lists the Bill of Rights.

3 - Locate at least one example in the student's textbook where footnotes and bibliography are used.

SEQUENCE OF INSTRUCTION

ADVANCED ORGANIZER

TEACHER	STUDENTS
1 - Have students determine the rules for a club that will meet with the purpose of viewing videotapes (or another club that you may wish to substitute). Suggest that rules may be needed concerning membership, time and place for meetings, who will provide videotapes, etc.	Suggest rules that will be used.
2 - Ask students why they suggested particular rules. Make notes of which ideas were borrowed from previous experiences.	Attempt to determine what previous experiences prompted them to suggest specific rules.
3 - Introduce the concepts of Bibliography and Footnotes. Explain that they are a means to show that ideas are borrowed from someone else. Use examples from the textbook to illustrate the use of bibliography and footnotes.	Observe the information in the textbook that illustrates the use of Bibliography and Footnotes.
4 - Introduce Sir Isaac Newton's statement: "I stand on the shoulders of those who came before me." Ask students to explain how this statement is related to the earlier discussion about the rules for the club, bibliography and footnotes.	Attempt to explain that people often benefit from using ideas that others have suggested and/or tried and found to be useful.
5 - Tell the students this exercise was intended to help them understand that the writers of the Bill of Rights borrowed ideas from English documents that were written at an earlier time. Next, we will look for ideas in the Bill of Rights that were borrowed.	Listen and ask questions for clarification.

TEACHING THE CONTENT

TEACHER	STUDENTS
6 - Distribute **READING 1**, the Magna Carta handout. Have students read and compare the quotations. Then ask them to write down the main idea that is presented in these documents.	Read the quotation and write the main idea. (They should recognize the idea that the punishment should fit the crime.)
7 - Provide background information that explains why this provision was included in the Magna Carta.	Listen and ask questions for elaboration and clarification.

GENERAL BACKGROUND

The ideas of self-government expressed in the United States Constitution reach far back into history. In England these ideas came into existence as a result of (1) a concern about limiting the power of kings, (2) a desire of people to govern themselves, and (3) a desire to gain individual liberties.

During the Middle Ages, the king and the barons each had certain responsibilities. The king was to keep peace, provide protection against foreign invasion, and provide justice when disputes arose. The barons were to provide tax money to carry on the business of the kingdom, be loyal to the king, and provide military service. The common people had no voice in government.

THE MAGNA CARTA

King John was the selfish king at the time of Robin Hood. Among other things, he placed unreasonable tax demands on the barons and assigned unreasonable fines in court. In response, in 1215 the barons forced King John to sign the Magna Carta (Great Charter). This charter limited the power of the king and increased the power of the barons. Although the Magna Carta was written by and for the barons, it is considered the foundation of individual rights and liberties for all English-speaking people.

TEACHER	STUDENTS
8 - Ask students why this idea was included in the Bill of Rights. How might life be different for us if this idea had not been included?	Provide answers. They should explain that political authorities could punish people they do not like by charging a large fine, even for a minor violation of the law, like a parking violation.
9 - Hand out **READING 2**, the ENGLISH BILL OF RIGHTS. Have students compare the quotations from this document with provisions in the Bill of Rights. Ask them to identify Amendments that contain provisions that are similar.	Compare the provisions and identify those that are similar.
10 - Ask students to share their findings. Be sure they understand the main idea of the provision in Amendment 1 is that people have the right to petition (make requests of) the government. Again, Amendment 8 is intended to ensure that the punishment should fit the crime.	Explain which provisions in the Bill of Rights are similar to the provision in the English Bill of Rights as well as the main idea of the provisions.
11- Provide background information that explains why such provisions were incuded in the English Bill of Rights.	Listen and ask questions for clarification.

THE ENGLISH BILL OF RIGHTS

King James II wanted Catholics in government office. The Parliament, however, was Puritan. They decided to remove James and put his daughter Mary, and her husband William (both Protestants), on the throne. In order to become rulers, William and Mary had to agree to the provisions in the Bill of Rights (1689).

TEACHER	STUDENTS
12 - Ask students how life might be different for us if these provisions had not been included in the Bill of Rights.	Provide answers. In addition to the response in # 8 above, the First Amendment provision guarantees that people can join together in groups to ask the government to pass laws that they favor.

CLOSING THE LESSON

Have students write answers to the following questions:

1 - What is the main idea that we studied in this lesson?
2 - Describe the main idea.
3 - Give an example of the main idea.

Responses like the following will tell you that the students understood the idea presented in the lesson:

1 - The main idea of the lesson is that the writers of the Bill of Rights borrowed some ideas from England when they wrote the Bill of Rights.

2 - The writers of the Bill of Rights borrowed from at least two English documents when they wrote the Bill of Rights. They borrowed from the Magna Carta (1215), and the English Bill of Rights (1689).

3 - Amendment VIII of the United States Constitution (1791) states that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." This is like the provision in Clause 20 of the Magna Carta (1215) which states: "A freeman shall only be amerced for a small offence according to the measure of that offence. And for a great offence he shall be amerced according to the magnitude of the offence...."

This means that the idea that the punishment should fit the crime (one should receive a small punishment for a small crime and a more severe punishment for a larger crime) was borrowed by the writers of the Bill of Rights from the writers of the Magna Carta.

READING 1

ENGLISH INFLUENCES ON THE BILL OF RIGHTS
THE MAGNA CARTA (1215)

Following is a section from Clause 20 of the Magna Carta:

> "A freeman shall only be amerced for a small offence according to the measure of that offence. And for a great offence he shall be amerced according to the magnitude of the offence. . . ."

Amendment VIII of the United States Constitution (1791) states:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

---

1 - What is the main idea presented in these two readings?

READING 2

ENGLISH INFLUENCES ON THE BILL OF RIGHTS
THE ENGLISH BILL OF RIGHTS (1689)

Following are two statements from the English Bill of Rights:

5) "That it is the Right of the Subjects to petition the King and all Commitments and Prosecutions for such Petitioning are Illegall.

10) "That excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted.

Which provisions in the First 10 Amendments to the United States Constitution are similar to the statements in the two statements above?

Amendment	List the wording in the U. S. Bill of Rights
________	________________________________
	________________________________
________	________________________________
	________________________________

1 - What is the main idea presented in the first statement?

____

____

____

____

2 - In the second statement?

____

____

____

II - C. WHAT IS A PRINCIPLE? WHAT IS A RIGHT?

A Lesson on the Virginia Declaration of Rights

OVERVIEW of the lesson: The Virginia Declaration of Rights, adopted June 12, 1776, put into words a series of political ideas which representatives of the people of Virginia believed were important. These representatives believed that the ideas in the declaration were so important to citizens that these ideas merited being approved as a legal ordinance by the government of Virginia. As Americans we are today indebted to the authors of the Virginia Declaration of Rights since their efforts would create a document which contributed substantially to the Bill of Rights, included as the first ten amendments to our Constitution.

Students who complete this lesson successfully will have studied specific examples from the document, and they will learn that some ideas in the Virginia Declaration of Rights eventually were included in other states' ordinances and finally were included in the Constitution as some of the first ten amendments which we know as the Bill of Rights.

The **PURPOSE** of this lesson is to teach about the kinds of ideas included in the Virginia Declaration of Rights. In particular, the lesson will focus on two kinds of ideas: (1) Basic Principles which involve fundamental, overarching ideas, and (2) Enumerated Rights which are ideas about specific protections to which citizens are entitled. At the conclusion of this lesson students will have learned about the Virginia Declaration of Rights, about the concept "fundamental principle," and about the concept "enumerated right."

NECESSARY PREPARATION

1 - Prepare copies of the Excerpts from **THE VIRGINIA DECLARATION OF RIGHTS** and the Bill of Rights for each student.

2 - Review the definitions of key vocabulary words: Principle, Right, Enumerated, and Fundamental.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Ask students to keep in mind these questions while listening to two sentences: What is the meaning of the sentence? How does it apply to us today?	Prepare to listen with the questions in mind.

TEACHER	STUDENTS
2 - Read the following sentences: "All people in a community are equally free and have certain rights." "A person who is convicted of a crime can not be given an unfair or cruel punishment."	Listen with the questions in mind.
3 - Ask the students to explain what the sentences mean and how they relate to today.	Students share ideas about the sentences.
4 - Ask students to focus on the differences between the sentences and write down ways they are different.	Write down a list of differences.
5 - Ask students to share their answers and write several of the best answers on the board.	Share the answers that have been written.

The first sentence is an example of a principle; in this case a political principle which states something considered to be an essential truth and guide to behavior for all people in a society. Principles are ideas which people in a society consider fundamental, basic and essential. Principles are ideas which are considered to be important and they form the foundation for making decisions about government and political behavior. Sentence #1 is a paraphrasing of Declaration #1 in the Virginia Declaration of Rights.

The second sentence is an example of a right. Rights are ideas which are consistent with political principles and which are considered morally correct. Rights enumerate or describe specific actions or conditions to which members of a society are entitled. In this sentence, the right regarding punishment for criminal convictions paraphrases Declaration #9 in the Virginia Declaration of Rights and reflects a guide to behavior which the authors believed was important for those in governmental positions.

TEACHER	STUDENTS
6 - Read Declarations #8, and 10. Ask if these sentences belong with sentence #1 or with sentence #2.	Listen, discuss, express opinions and make a class decision.

Declarations #8 and 10 belong with sentence #2 because they are statements of rights. Each one of these declarations sets forth (enumerates) a specific action or condition to which citizens are entitled. They present specific examples of guarantees that their contract with the government will provide.

TEACHER	STUDENTS
7 - Read Declarations #2 and 3. Ask students if these sentences are statements of principles or statements of rights.	Listen, discuss, express opinions and make a decision.

These declarations are examples of principles. These principles were also an integral part of the Declaration of Independence as well as the Bill of Rights of many other states' constitutions. These principles present fundamental or basic notions about power and the people, government and its purpose, and the fundamental organization of a government.

TEACHER	STUDENTS
8 - Handout copies of THE VIRGINIA DECLARATION OF RIGHTS. Explain the history and background concerning its writing. Ask students to read the Declaration and determine which of the statements are rights and which are principles. -	Read and discuss the document, reading and discussing in groups. Each group decides which of the statements are rights and which are principles.
9 - Ask representatives from the groups to explain which statements are rights and which are principles.	Representatives from the groups explain which statements are rights and which are principles.
10 - Ask students to summarize what has been learned in the lesson to this point.	Explain the key words: right, principle, fundamental, and enumerated. Describe the Virginia Declaration of Rights.

At this point in the lesson the students have been introduced to the Virginia Declaration of Rights and they have learned that the document contains two kinds of political statements: principles and rights. The students have also learned that principles are fundamental or basic statements. Principles have broad enduring importance in guiding people in government. The students have learned that rights specify a particular action or condition to which citizens are entitled under the government.

TEACHER	STUDENTS
11 - Ask: "Why have a Declaration of Rights?"	Discuss and list reasons and ideas.
12 - Ask: "If we were to write a Declaration of Rights for our society today, which of these principles and rights should we keep?"	List which principles and rights would be retained, giving explanations of why they are important in our society.
13 - Ask: "What new principles and rights would we need to add in order to make the Declaration more appropriate for our time in history?"	Explain what new principles and rights need to be added.

The question of adding new principles and rights for our times is difficult. Students may be inclined to propose trivial or superficial ideas. As teachers we have to be willing to listen carefully because behind the students' suggestions may be ideas which they truly believe are important. There are several areas worth exploring and brainstorming with students. These might include: (1) the enormous population growth since the 18th century has drained natural resources and drastically altered the earth's environment; (2) since the 18th century the size of government at all levels has increased, making the individual's access and voice in government more and more limited; (3) since the 18th century the social and cultural diversity of America has changed enormously and there has been, as well, a shifting from an agrarian to an industrial and now to a technological society; (4) the family structure of our society has undergone extraordinary changes in which families have become smaller with a wide array of parental patterns; (5) American society has become extraordinarily diverse in languages, cultures, and religions; and (6) conditions for children and youth have changed tremendously since the 18th century. No doubt there are many additional areas worth discussing that may be related to the redrafting of a Declaration of Rights.

CLOSING THE LESSON

Remind students that just as we today benefit from knowing and understanding the Virginia Declaration of Rights, so did the people of the 18th century who lived in other states at the time they wrote the United States Bill of Rights. Many of the ideas in the national Bill of Rights first appeared in the Virginia Declaration of Rights.

TEACHER	STUDENTS
13 - Inform students where to find the Bill of Rights in their textbook or handout a copy. Ask students to read these amendments and decide which are similar to statements in the Virginia Declaration of Rights.	Read the Bill of Rights and list which provisions are the same and which are different.
14 - Ask students to explain which statements in the Bill of Rights are similar to those in the Virginia Declaration.	Share their findings.

LESSON EVALUATION

1 - What is the meaning of the phrase "fundamental principle?"

2 - What is the meaning of a "right?"

3 - What is the difference between a political principle and a political right?

4 - How is the Virginia Declaration of Rights related to the Bill of Rights?

Excerpts from

THE VIRGINIA DECLARATION OF RIGHTS

(Adopted June 12, 1776)

A DECLARATION of RIGHTS made by the representatives of the good people of Virginia, assembled in full and free Convention; which rights do pertain to them, and their posterity, as the basis and foundation of government.

1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, of all the various modes and forms of government that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration; and that whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it, in such manner as shall be judged most conducive to the publick weal.

8. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favour, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty, nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land, or the judgment of his peers.

9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

10. That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grevious and oppressive, and ought not to be granted.

II - D. THE ANTIFEDERALISTS - LIBERTIES MUST BE ENUMERATED

OVERVIEW of the lesson: The effort to obtain ratification of the proposed Constitution was led by the Federalists. They believed that a strong national government was needed to ensure that the new nation would avoid the problems that were experienced under the Articles of Confederation. Their opponents were called Antifederalists. They believed that a strong national government would deny liberties that should be guaranteed to the citizens. An initial question in this lesson asks students why some people opposed adding a provision to the Constitution that would guarantee freedom of religion. Then students examine the arguments given by Federalists and the counter-position of the Antifederalists. A series of ten position statements is then used to identify Federalist and Antifederalist philosophies.

Students who complete this lesson successfully will be able to identify the major arguments that were presented by both Federalists and Antifederalists, with particular emphasis being placed on the important role that a proposal for a Bill of Rights played in the ratification battle.

The **PURPOSE** of this lesson is to teach students that the Bill of Rights was added to the Constitution, not because the Federalists wanted it, but because the Antifederalists believed that the new national government would become so powerful that it would endanger citizen's rights unless certain liberties were enumerated and listed in the Constitution.

NECESSARY PREPARATION

1 - Duplicate copies of (A) the **FEDERALISTS AND ANTIFEDERALISTS** and (B) the **LESSON EVALUATION** handouts.

2 - Determine how you wish to teach Step 7 of the lesson. If each student is to have a copy of the **POSITION STATEMENTS**, copies will need to be duplicated. If you decide to have groups provide answers to the position statements, each group will need different colored cards with an "A" or an "F" on them.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Inform students that in this lesson they will learn why some people wanted a Bill of Rights added to the Constitution and why others were opposed to adding a Bill of Rights.	Listen and ask questions for clarification.

TEACHER	STUDENTS
2 - Ask, "What prevents our national government from declaring that one particular religious denomination shall be the national religion?"	Respond by identifying the First Amendment Establishment of Religion Clause: "Congress shall make no law respecting an Establishment of Religion"
3 - Inform students that there were people who did not want phrases such as the above added to the Constitution. Ask, "Why do you think they opposed a written Bill of Rights?"	Respond with ideas that might explain why some people may be opposed to a written Bill of Rights.
4 - Encourage students to provide their answers to the above question, but do not indicate which may be correct. Instead, tell them they will read about the arguments presented by the Federalists, who did not want a written Bill of Rights.	Listen and ask questions for clarification.
5 - Distribute the FEDERALISTS AND ANTI-FEDERALISTS handout. Have students read the explanations.	Read the explanations of the two philosophies.
6 - Distribute the POSITION STATEMENTS handout. Ask students to refer to the FEDERALISTS AND ANTIFEDERALISTS handout to help them to determine the origin of the statements.	Determine the origin of the position statements.
7 - Ask students to explain how they answered the POSITION STATEMENTS and why they believe they are correct.	Volunteer explanations of who made the POSITION STATEMENTS and why.

An alternative method for teaching Step 7 would be to divide students into groups and have each group hold up a card with an "A" or an "F" after you read the position statement to them or reveal it to them on an overhead projector. (The cards marked with "A" need to have a different color then the cards marked with "F".) Position statements 1, 2, 6, 7, and 9 are Federalist positions. Statements 3, 4, 5, 8, and 10 represent Antifederalist positions.

CLOSING THE LESSON

Have students complete the LESSON EVALUATION.

Answers to the identification questions are:
1 - A
2 - A
3 - F
4 - F
5 - F

The essay questions should include items listed as major arguments for both sides as found on the FEDERALISTS AND ANTIFEDERALISTS and the POSITION STATEMENTS handouts.

FEDERALISTS AND ANTIFEDERALISTS

FEDERALISTS were people who supported the Constitution and wanted all states united under a strong federal (or national, or central) government. This central government would exist with the state governments but have some powers over them. The central government would have much more power than the old government under the Articles of Confederation. Federalist were reacting to some of the weaknesses of the Articles of Confederation--the federal government couldn't tax states without their consent, the army was weak, each state had it's own money, and the national government had only those powers that the state governments gave to it.

Federalists generally felt no need to add a Bill of Rights to the Constitution because: (1) the federal government was made up of elected officials who surely would not want to take away the people's rights, (2) rights were already listed throughout the Constitution, (3) most state constitutions already had their own bills of rights, and (4) a Bill of Rights might omit some rights and the government then could deny these to the citizens.

The Federalists realized that ratification by nine of the thirteen states would be hard to achieve. Therefore, a group of articles called The Federalist Papers were written by Alexander Hamilton, James Madison and John Jay. These papers presented arguments that explained why the proposed Constitution should be adopted. Some states, however, would not ratify the Constitution until the Federalists agreed to add a Bill of Rights to the Constitution at a later date.

The ANTIFEDERALISTS did not support the new Constitution. They wanted the states to have more rights and powers. They did not trust a powerful national government which they felt was often too far away to represent their needs. The Antifederalists wanted a loose confederation of states as they had earlier under the old Articles of Confederation.

Because they did not trust the powerful national government, many Antifederalists wanted a written Bill of Rights added to the Constitution before they would ratify it. Thomas Jefferson said: "I will tell you what I do not like. First, the omission of a bill of rights, providing clearly, and without the aid of sophism, for freedom of religion, freedom of the press, protection against standing armies, restriction of monopolies, the eternal and unremitting force of the habeas corpus laws, and trials by juries. . . ."

POSITION STATEMENTS

Decide whether the following statements would be made by a (F) Federalist or an (A) Antifederalist.

____ 1. "We don't need a Bill of Rights. We can trust the national government to treat us fairly because there are enough checks on its power."

____ 2. "What's the big deal?" We can have a national government and a state government at the same time.

____ 3. George Mason said that the First 10 Amendments gave him "much satisfaction."

____ 4. The Constitution gives the national government too much power at the expense of the state governments.

____ 5. It is dangerous not to list the powers of the national government because it needs to have clear limits on it.

____ 6. Experience has shown that a strong national government is needed to deal with problems such as trade, coining money, and national defense.

____ 7. The national government could not become too powerful because of the limitations placed on it by the system of separation of powers and checks and balances.

____ 8. A bill of rights is needed to protect individual citizens against the power of the national government.

____ 9. It would be dangerous to have a national bill of rights because it would only protect those rights that are actually listed.

____ 10. Without some guarantee that we can speak freely and worship as we please, we should not ratify the Constitution.

LESSON EVALUATION

Would the following be identified with a (F) Federalist or an (A) Anti-federalist?

___ 1. The states are the best protectors of civil liberties.

___ 2. Thomas Jefferson's writings.

___ 3. The new constitution should be ratified without a bill of rights.

___ 4. Alexander Hamilton's writings.

___ 5. A strong national government is needed to run the country.

Name two arguments made by the Antifederalists that tell why they believed that a Bill of Rights should be added the the Constitution.

Name two arguments made by the Federalists stating why a Bill of Rights was not needed.

II - E. BIOGRAPHIES OF THE FRAMERS: GEORGE MASON AND JAMES MADISON

OVERVIEW of the lesson: Two men, both from Virginia, were primarily responsible for the addition of the Bill of Rights to the Constitution. One, George Mason, opposed the Constitution and refused to sign it at the Convention, partly because it did not contain a Bill of Rights. The other, James Madison, was the chief architect of the Constitution and at first believed that a Bill of Rights was unnecessary. However, he guided the Bill of Rights through the First Congress to fulfill a promise that was made to gain ratification of the Constitution in several state conventions.

Students who complete this lesson successfully will understand the arguments presented by these two men during the critical years of constitution making for the new nation.

The **PURPOSE** of this lesson is to teach students about the background, motivations, and achievements of the two men who had the greatest influence on the writing and the ratification of the Bill of Rights.

NECESSARY PREPARATION

1 - Decide how to divide the class into groups of four, and how to designate members of each group as George Mason, James Madison and the persons who interview Mason and Madison.

2 - Duplicate copies of: (A) the **BIOGRAPHY** sheets, (B) the **INTERVIEW FORM**, and (C) the **LESSON EVALUATION**.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Write the names of George Mason and James Madison on the board. Ask students to tell what they know about these men.	Explain what they know about these men.
2 - Tell students that one of the men opposed adding a Bill of Rights to the Constitution and the other would not sign the Constitution because it did not have a Bill of Rights. In this lesson students will learn how these two men, in very different ways, each had great influence on the addition of a Bill of Rights to the Constitution.	Listen and ask questions for clarification.

TEACHER	STUDENTS
3 - Divide the class into groups of four each. Designate one member of each group to play the role of George Mason and another to play the role of James Madison. Provide them with the BIOGRAPHY sheet for that man. Designate a third member of the group as the interviewer for Mason and the fourth as the interviewer for Madison. Provide them with copies of the INTERVIEW FORM. Ask all students to study their respective handouts.	Students who take the roles of Mason and Madison study their BIOGRAPHY. Students who are interviewers study the INTERVIEW FORM.
4 - After students have studied their assigned materials, interviewers will question the students who are role-playing Madison and Mason. The interviewer will record the information on the INTERVIEW FORM.	Interviewers question those who role play the men in the biography and record the answers on the INTERVIEW FORM.
5 - Provide each student with an INTERVIEW FORM.	Obtain an INTERVIEW FORM.
6 - Ask the student who interviewed George Mason to share with others in the group the responses they recorded on their INTERVIEW FORM. The two students in the group who studied about James Madison will record the information about Mason on the new INTERVIEW FORM.	George Mason interviewers share their information. The two students in the group who role played James Madison record the information about Mason on their new INTERVIEW FORMS.
7 - Ask the student who interviewed James Madison to share with others in the group the responses they recorded on their INTERVIEW FORM. The two students in the group who studied about George Mason will record the information about Madison on the new INTERVIEW FORM.	James Madison interviewers share their information. The two students in the group who role played George Mason record the information about Madison on their new INTERVIEW FORMS.

TEACHER	STUDENTS
8 - Ask students to explain how these men were similar and how they were different in respect to: Age--Where they lived--their political experience prior to 1787--their attitude about a Bill of Rights--their role in adding a Bill of Rights to the Constitution--their political activity after the Constitutional Convention of 1787.	Explain the similarities and differences between these two men concerning the topics listed.
9. Ask students to decide who was really "Father of the Bill of Rights."	Discuss who was really "Father of the Bill of Rights."

A good case can be made for either Geroge Mason or James Madison as "Father of the Bill of Rights," depending on how one interprets the phrase. It might be argued that Mason was the **philosophical** Father, while Madison was the **political** Father.

George Mason was the idea man and author of the first American Bill of Rights, the Declaration of Rights which was a part of the Virginia constitution of 1776. This document contributed many of the concepts which appeared in the United States Bill of Rights. Mason was the first and most consistent advocate of the need for a Bill of Rights. He argued for its inclusion during the Federal Convention, he wrote a persuasive pamphlet advocating the need for protection of natural rights against the new government, and he spoke strongly for its inclusion during the convention in which Virginia ratified the Constitution.

James Madison was the political leader who virtually forced the United States Congress to submit amendments for the states to consider and eventually ratify. If he had not felt honor-bound to carry out his commitments to offer amendments to protect natural rights, Congress would probably never have done so: President George Washington was his one major ally. Madison both wrote the amendments and shepherded them through Congress. Others in Congress wanted to put them off while "more important" matters were confronted by the new government. If the amendments had been delayed for long, they would most likely never have appeared.

If George Mason was the "Father of the Bill of Rights," then James Madison was its "midwife." If James Madison was the "Father of the Bill of Rights," then George Mason was its "grandfather."

CLOSING THE LESSON

Have students complete the LESSON EVALUATION.

BEST COPY AVAILABLE

INTERVIEW FORM

Name of Interviewer (Your name) ________________________________

Name of Role Player Interviewed (Circle one) MASON MADISON

1 - What state did you represent in 1787 at the Constitutional Convention?

2 - How old were you in 1787?

3 - What is your educational background?

4 - What is your occupation?

5 - What experience did you have in politics before the Constitutional Convention?

6 - What did you do at the Constitutional Constitution in 1787?

7 - What were your feelings about the Constitution?

8 - What did you do that contributed to adding a Bill of Rights to the Constitution?

9 - How were you active in politics after the Constitutional Convention in 1787?

George Mason: Father of the Bill of Rights

George Mason (1725-1792), who managed a 5000 acre estate near Alexandria, Va., was the "Father of the Bill of Rights!"

Much of his youth was spent in the law library of his uncle John Mercer. Mason had an occasional tutor but he was basically self-taught. Although he was never licensed as an attorney, he was one of the leading American authorities on public law. Mason always considered himself a private gentleman who resisted and disliked public service, but he was frequently drafted for governmental activities, mostly in and around his Potomac River home which he built and named Gunston Hall. He was, for example, a Fairfax County justice from young manhood until 1789. He despised legislative committees and said of one brief service in the Virginia House of Burgesses that his disgust had him "near fainting in the House."

Behind the scenes, Mason wrote documents attacking the Stamp Act and the Townshend taxes during the beginnings of American opposition to British rule. A speculator in western lands, he defended Virginia claims to the West in his first major political paper in 1773. His Fairfax Resolves of July 18, 1774, supported American armed oppostion to the British. The Resolves were adopted first by his county, then his state, and finally by the Continental Congress.

Mason returned briefly to the Virginia legislature in 1776 when his political career reached a peak. He was the principal author of the new state constitution and nearly sole author of its Declaration of Rights. The only part of the latter document which was not his own work was the clause on religious freedom. James Madison was able to convert Mason's religious toleration clause to religious freedom. Mason's Virginia constitution set a pattern for a number of other state constitutions. His Declaration of Rights was influential in the writing of the Declaration of Independence, became a pattern for many other states' Bill of Rights, and in 1789 it was a principal source for ideas in the United States Bill of Rights.

Although he was firmly committed to states' rights, Mason was convinced that the Articles of Confederation were an inadequate American government. He participated in the Mount Vernon conference of 1785, a preliminary meeting which contributed to the calling of the Federal Convention of 1787. He was chosen for the Annapolis Convention of 1786, the next step, but he did not attend. He participated throughout the 1787 Convention, but decided in the last two weeks not to sign the Constitution. He was one of three delegates who refused to sign, although there were several others who had departed early. In the last few days of the Convention, Mason argued for the insertion of a Bill of Rights, offering to prepare such a document. He also opposed the compromise which allowed the slave trade to continue until 1808, regarding this international trade in human beings as "diabolical in itself and disgraceful to mankind."

Mason became one of the Virginia leaders to the opposition to the ratification of the U.S. Constitution. His Objections to the Federal Constitution was one of the strongest pleas for the need for amendments to protect citizens' rights against this fearsome new national government. His warning that sovereign states might be sued by citizens of other states was a premonition of the Eleventh Amendment, as well. In 1789, when Congress submitted the amendments which became the Bill of Rights, Mason objected that they were "Milk & Water Prepositions" that would be nothing more than "a Tub to the Whale." Virginia's ratification of the ten amendments in December 1791 provided the three-fourths vote required to make them part of the Constitution. Mason died less than a year later.

James Madison: Father of the Bill of Rights

James Madison (1751-1836), a Virginia plantation owner and a statesman for most of his life, is universally known as the "Father of the Constitution." It is not so widely known that he was also the "Father of the Bill of Rights."

He was trained in private schools and by tutors before entering the College of New Jersey (now Princeton University) in 1769, where he studied law, government and history. He continued his studies there for a year after receiving his degree in 1771.

Madison's first major contribution to American government was his participation in the Virginia House of Delegates in June 1776, which wrote the first of the Revolutionary War constitutions, including its famous Declaration of Rights. The latter document was largely the work of George Mason, but Madison made the significant contribution of changing Mason's religious toleration clause to one of religious freedom. Thus the practicing of one's own religion was an absolute right, not merely a privilege granted by government.

He was less than thirty years old when he first appeared in the American Congress in 1780, where he was a persistent advocate of a stronger national government. He remained in office at the national or state level almost continuously until his retirement as President in 1817. In 1785 Madison participated (with George Mason and George Washington) in the Mount Vernon conference which negotiated Virginia's conflicts with Maryland over access to the Potomac River. This led to the Annapolis Convention of 1786, which was called to discuss trade throughout Chesapeake Bay. This convention called on Congress to convene a special convention to discuss all of the problems of American government, not just commerce.

Madison introduced the resolution in the Virginia House of Delegates which called on Virginia Congressmen to propose the Convention of 1787, which wrote the United States Constitution. Characteristically, he was in Congress early in 1787 when the Convention was called, and after the Philadelphia Convention he hastened to New York to persuade Congress to submit the proposed Constitution for state ratification without indicating Congress's reservations. For months before the Convention, Madison had studied world governmental systems, especially confederations, and he came to Philadelphia as the best prepared delegate. He wrote the Virginia Plan of Union, which guided the deliberations of the Convention, he was one of the principal advocates of a strenghtened national government, and he served as unofficial secretary, taking the "Notes of Debates" which are our principal source of knowledge regarding the Convention. He fulfilled his pledge to keep the notes confidential until all members had died, he himself being the last survivor until 1836.

Madison entered the Virginia ratification convention of 1788 opposed to critics who insisted that a Bill of Rights be added to the Constitution prior to ratification. He felt that basic rights need not be protected from the limited government which they had created in the Constitution. To win Virginia's ratification, however, he gave grudging agreement to a Bill of Rights, promising to add amendments **after** rather then **prior** to ratification. While running for Congress, he pledged that it was his "sincere opinion that the constitution ought to be revised, and that the first Congress meeting under it ought to prepare and recommend to the States for ratification, the most satisfactory Provisions for all essential rights." While he remained suspicious of "parchment barriers," he wanted the amendments to be "the free gift of the friends of the constitution rather than to be extorted by its enemies."

He had difficulty carrying out his pledge to amend the Constitution. Those who had demanded amendments proved no more eager to provide a Bill of Rights than those who opposed them. The Antifederalists probably wanted to be able to say "I told you so," when the Federalists failed to amend the Constitution. Only President Washington and Congressman Madison kept pressing the issue. Madison announced on May 4, 1789, that he would submit amendments and on June 8 he submitted proposals "to limit and qualify the powers of Government by excepting out of the grant of power those cases in which the government ought not to act, or to act only in a particular mode." He had studied all of the proposals offered by the various states as they ratified the Constitution, many of them influenced by the Virginia Declaration of Rights, and boiled them down to nineteen. He wanted these amendments to be inserted into the Constitution, rather than added to the end. Both in July and in August Madison had to "beg" the House to listen to his proposals.

The House forwarded seventeen proposed amendments to the Senate, which cut and combined them into twelve, which were forwarded to the states for ratification on September 25, 1789. Ten of the amendments became part of the Constitution on December 15, 1791, when Virginia became the eleventh state to ratify them. Madison declared then the "In Europe, charters of liberty have been granted by power. America has set the example. . .of charters of power granted by liberty." The intransigence of Antifederalists who had previously decried the lack of a Bill of Rights was best exemplified by Virginia Senator William Grayson, who wrote to

Governor Patrick Henry that "they are good for nothing, and I believe, as many other do, that they will do more harm than benefit." Senator Aedanus Burke of South Carolina was more colorful when he declared that the amendments are "little better than whip-sylabub, frothy and full of wind . . . . We have done nothing but lose our time. . . . It will be better to dr op the subject now."

LESSON EVALUATION

1 - If the statement applies to George Mason, place "1" in the blank in front of the statement; if the statement applies to James Madison, place "2" in the blank in front of the statement.

_____ A. I studied law, government and history at what is now Princeton University.

_____ B. I was over 60 years old at the time of the Constitutional Convention.

_____ C. I refused to sign the Constitution.

_____ D. I was the main author of the Virginia Declaration of Rights.

_____ E. In 1787 I promised to have a Bill of Rights added to the Constitution after it was ratified.

2 - Which man, George Mason or James Madison, was most responsible for having the Bill of Rights added to the Constitution?

3 - Which man was most active in politics after the Constitutional Convention in 1787? Explain.

CHAPTER III

Limited Government I
SEPARATION OF POWERS

OVERVIEW: SUBSTANCE AND SEQUENCE

Chapters III and IV concern the two major institutional arrangements that the Framers of the Constitution agreed were necessary to ensure that power was not concentrated in one branch or at one level of government. This was considered necessary to protect citizen liberties. As James Madison wrote in Federalist 51, "In the compound republic of America, the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will controul each other; at the same time that each will be controuled by itself."

The lessons in Chapter III demonstrate how the powers are separated among the legislative, executive and judicial branches of government. Lesson III - A also is designed to develop students' **critical thinking skills** as they discover the main role that is assigned by the Constitution to the three branches of government. A series of checks and balances **problem solving exercises** is at the center of Lesson III - B. Students learn that no branch is supreme, even in its own sphere: both executive and judiciary set limits on legislation, the judiciary and legislature have ways of impeding executive action, and the executive and legislature in turn limit the judiciary.

The final lesson concerns the action taken by the federal courts that had the effect of elevating them to a co-equal status with the other two branches. By evaluating hypothetical actions of the President, Congress, and a state legislature, students will discover that, with the decision in Marbury v. Madison in 1803, the federal courts declared their authority to exercise the power of judicial review--a power that has been very significant for preserving individual rights and liberties throughout American history.

LESSONS IN THIS CHAPTER

III - A. SEPARATION OF POWERS: Divide the Power into Three Branches

III - B. CHECKS AND BALANCES: Ambition Must be Made to Counteract Ambition

III - C. JUDICIAL REVIEW: The Courts Become More Powerful

III - A. SEPARATION OF POWERS - Divide the Power into Three Branches

OVERVIEW of the lesson: The Framers of the Constitution considered the concept of Separation of Powers to be an important principle of governmental organization. By separating the major functions of government into the executive, legislative, and judicial branches, they hoped to avoid the concentration of power in any one person or branch of government. In this lesson students will learn the major functions performed by each of the three branches by answering a series of questions that are presented in a step-by-step context that is designed to develop critical thinking skills.

Students who complete this lesson successfully will enhance a critical thinking skill by answering a series of questions that assist the development of this ability.

The **PURPOSE** of this lesson is to teach students that the powers of the three branches of government were separated so that no one of them would become too powerful and thereby deny individual citizens their liberties.

NECESSARY PREPARATION

1 - Duplicate class WORKSHEETS for the Congress, the Executive, and the Judiciary.
2 - Duplicate class READINGS from the Constitution for the Legislative Branch, the Executive Branch and the Judicial Branch.
3 - Duplicate the SUMMARY SHEET.
4 - Study the explanation labeled **TEACHER RESOURCE** that explains how this lesson is designed to develop critical thinking skills.

OPTIONAL:

5 - Because this lesson lends itself to cooperative learning, groups of three would be appropriate with each group being responsible for sharing their answers to questions about one of the three branches of government when the class is reviewing the WORKSHEETS. If groups of four are used, the fourth person might pass out and collect the WORKSHEETS for their group and serve as coordinator.

6 - The SUMMARY SHEET may be replaced with an exercise that involves an envelope for each group with three (3" by 5") cards of different colors labeled respectively: President (executive), Supreme Court (judicial), and Congress (legislative). For directions see instruction 9 in the **SEQUENCE OF INSTRUCTION** section.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Ask students to respond to the questions, "What is the Congress?" and "What does Congress do?" (At this point in the lesson do not inform students whether their answers are correct. They will have an opportunity to check the accuracy of their ideas as the lesson is completed.)	Volunteer responses to the questions.
2 - Hand out **READING 1** and **CONGRESS** worksheet.Have students provide answers to questions concerning Congress. They are to check their answers by studying the information in **READING 1**.	Provide answers for **CONGRESS** worksheet. Check answers by studying the information in **READING 1**.
3 - Ask selected students to share their answers. They should recognize that the Congress performs a **lawmaking** function.	Selected students share their answers.
4 - Attention can now move to the executive. Ask, "What does the President do?" Although the President is one of the first officials who is recognized as governmental by young children, they do not move rapidly to an understanding of duties and responsibilities of the office. Have students complete the **EXECUTIVE** worksheet and check their answers by examing **READING 2**.	Volunteer responses to the question. Complete **EXECUTIVE** worksheet. Check answers by examining **READING 2** on the Executive.
5 - Ask selected students to share their answers. Discuss to ensure they understand that the President **administers (enforces) the law** and is **the chief representative of the country to other nations.**	Selected students share answers.

TEACHER	STUDENTS
6 - Begin the discussion of the judiciary by asking, "What do courts do?" Then ask, "What does the Supreme Court do?" Students will be quite familiar with courts and what they do, but less informed about the role of the one court that is specifically created by the Constitution -- the United States Supreme Court. Have students complete **JUDICIARY** worksheet. Have them check their answers by examining **READING 2** on the Judicial Branch.	Volunteer answers and complete the **JUDICIARY** worksheet. Check answers by examining **READING 2** on the The Judicial Branch.
7 - Ask selected students to share their answers. They should recognize that the courts **decide cases that involve the Constitution, and laws made by Congress. The Supreme Court is the highest authority in the national court system.**	Selected students share their answers.
8 - Hand out the **SUMMARY SHEET**. Have students answer the questions. Also place the following anagram on the board. Those who finish the **SUMMARY SHEET** can work on the anagram.	Provide answers to the questions on the **SUMMARY SHEET**. Complete the anagram, if time permits.

---

executive government branches. the Under is separated the Constitution
among power of judicial and legislative, the

Solution: Under the Constitution the power of government is separated among the legislative, executive and judicial branches.

The following "3 by 5" card exercise may be used as a supplement to or a substitution for Step 8 above:

9 - Hand each group an envelope with three cards of different colors labeled: Congress, President, and Supreme Court	Students distribute the three cards to three different students in their group.

10 - Read the following oral review questions:

Students in each group with the card representing the branch of government that is the correct answer to each question should raise up that card.

WHO?	
1 - enforces the laws	President
2 - is elected only by the people of their state	Congress
3 - regulates interstate commerce	Congress
4 - commands the armed forces	President
5 - is elected for a two or six year term	Congress
6 - can try any case arising under the Constitution	Supreme Court
7 - is nominated by the President	Supreme Court
8 - recognizes ambassadors from foreign nations	President
9 - has power to lay and collect taxes	Congress
10 - is elected to a four year term	President
11 - can authorize payment of debts	Congress
12 - has executive power	President
13 - exercises judicial power	Supreme Court
14 - exercises legislative power	Congress

CLOSING THE LESSON

Have students write answers to the following questions:

1 - What is the main idea (concept) that we studied in this lesson?
2 - Define the main idea (concept).
3 - Give an example of the main idea (concept).
4 - Why are there three branches of government?

Responses like the following will inform you that the students understood the concept of Separation of Powers.

1 - The concept studied in this lesson is "Separation of Powers."
2 - Separation of Powers refers to three branches of government, the legislative (Congress), the executive (headed by the President), and the judiciary (headed by the Supreme Court). Each branch is assigned its own functions and responsibilities.
3 - The legislative branch (Congress) makes the laws; the executive branch (headed by the President) administers the laws (sees that they are followed); and the judiciary (headed by the Supreme Court) interprets the Constitution (explains what the Constitution means) as well as laws made by Congress.

4 - Power and responsibility has been divided into three branches so that no one person or group of people can become too powerful and take away the liberties that people are given by the Constitution and the Bill of Rights.

An additional **CLOSING THE LESSON** exercise could involve asking students to draw a picture or a diagram which incorporates the concept of separation of powers and the three branches of government.

READING 1

ARTICLE I : THE LEGISLATIVE BRANCH

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2, CLAUSE 1. The House of Representatives shall be composed of members chosen every second Year by the People of the several States...

SECTION 2, CLAUSE 2. No Person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

SECTION 8, CLAUSE 1. The Congress shall have Power To lay and collect Taxes... to pay the Debts and provide for the common Defence and general Welfare of the United States...

SECTION 8, CLAUSE 3. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

SECTION 8, CLAUSE 5. To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

AMENDMENT 17
(Ratified in 1913)

SECTION 1. The Senate of the United States shall be composed of two senators from each state, elected by the people thereof for six years...

READING 2

ARTICLE II: EXECUTIVE BRANCH

SECTION 1, CLAUSE 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the term of four Years. . .

SECTION 2, CLAUSE 1. The President shall be Commander in Chief of the Army and Navy of the United States. . .

SECTION 3. [The President] shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed. . .

ARTICLE III: THE JUDICIAL BRANCH

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish....

SECTION 2, CLAUSE 1. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority. . .

CONGRESS

In each of the following pairs only one statement correctly describes the job of Congress. Copy the correct description in each pair on your own paper.

1. a. - Has the power to lay and collect taxes
   b - Can greet ambassadors of foreign nations

Read ARTICLE I, Section 8, Clause 1 in **READING 1** to see if you selected the correct answer.

Now write the correct answer for each of the following:

2. a. - Can enforce the laws
   b. - Has the power to lay and collect taxes

3. a. - Receives ambassadors of foreign nations
   b. - Can regulate commerce with foreign nations and between the states

4. a. - Can regulate commerce with foreign nations and between the states
   b. - Can command the army and navy

5. a. - Can enforce the laws
   b. - Elected by the people of their state

6. a. - Can coin money and fix the value of it
   b. - Can command the army and navy

7. a. - Can enforce the laws
   b. - Can pay debts and provide for the general welfare

Which of the following concerning Congress are correct? If the answer is correct copy it on your paper.

A. - Elected by the people of their state
B. - Can enforce the laws
C. - Can coin money, lay and collect taxes
D. - Receives ambassadors of foreign nations

Study the jobs of the Congress in **READING 1** to determine whether your answers are correct. Then decide what title would describe the POWER that is given to Congress? ______________________________

EXECUTIVE

In each of the following pairs only one statement correctly describes the job of the President. Copy the correct description in each pair on your own paper.

1. a. - Can lay and collect taxes
   b. - Can enforce the laws

2. a. - Receives ambassadors of foreign nations
   b. - Can coin money and regulate its value

3. a. - Receives ambassadors of foreign nations
   b. - Regulates commerce with foreign nations and between the states

4. a. - Can coin money and regulate its value
   b. - Elected for a term of four years

Which of the following concerning the job of the President is correct? If the answer is correct copy it on your paper. If the statement is incorrect place an "X" next to the letter on your paper.

A. - Regulates commerce
B. - Enforces the laws
C. - Commands the army and navy
D. - Elected for a four year term
E. - Receives ambassadors of foreign nations
F. - Coins money and regulates its value

Study the jobs of the President listed in **READING 2** to determine whether your answers are correct. Then decide what title would describe the jobs done by the President? ____________________

JUDICIARY

In each of the following pairs only one statement correctly describes the job of the Supreme Court. Copy the correct description in each pair on your own paper.

1. a. - Can try all cases arising under the Constitution
   b. - Can receive ambassadors of foreign nations

2. a. - Is the highest court in the national court system
   b. - Can regulate commerce with other nations and between the states

---

Which of the following concerning the job of the Supreme Court is correct? If the answer is correct, copy it on your paper. If the statement is incorrect place an "X" next to the letter on your paper.

A. - Can make the laws
B. - Is the highest court in the national court system
C. - Can recognize ambassadors of foreign nations
D. - Can try all cases arising under the Constitution

Check your answers by studying ARTICLE III in **READING 2** concerning the Judicial Branch. What title can you use to describe the POWER that is given to the courts?______________________________

SUMMARY SHEET

After each of the following powers, write whether the power is performed by the Congress, the President, or the Supreme Court. Only one answer is correct.

1 - Can lay and collect taxes. ____________________

2 - Is commander in chief of the army and navy. ____________________

3 - Regulates commerce with foreign nations and among states.

____

4 - Authorizes coining of money and regulating the value of it. __________

5 - Recognizes ambassadors of foreign nations. ____________________

6 - Can try cases arising under the Constitution. ____________________

7 - Enforces the laws. ____________________

8 - Can authorize debt payment and provide for the general welfare.

____

9 - Is the highest court in the national court system. ______________

10 - Is elected for a term of four years. ____________________

---

11 - Why are the powers of the government separated into three branches?

____

____

____

____

____

12 - What might be another way to separate the powers of government?

____

____

TEACHER RESOURCE

The **SEPARATION OF POWERS WORKSHEET** exercises are designed to develop critical thinking skills. They accomplish this objective in the following manner. First, the development of critical thinking rests on the idea of problem solving. To solve the problem, the student may have complete or partial information. If only partial information is provided, the student must infer the correct answer from the information available. However, if too much information is provided, the student must determine which information is relevant. For example, consider the first pair of responses concerning Congress. The student guesses the answer between (a) the power to lay and collect taxes and (b) the authority to receive ambassadors of foreign nations. Then, the student is encouraged to read the section of the Constitution that will confirm the correct answer.

The next exercise builds on the first. It requires the student to use the information gained when answering the first question. This procedure then allows the student to solve all subsequent problems by hypothesizing. If it is known that the Congress has the power to lay and collect taxes, and only one answer is correct, then the Congress does not have the authority to enforce the laws. Now the student has added one more bit of information and has three bits to guide future choices.

The next step is an elaboration of the process. Again the student must deduce the answer, but this time must remember what Congress cannot do as a requirement to solve the problem.

The student now has four bits of information, plus the beginning of the construction of two subsets; what Congress can do and what Congress cannot do. Following this format, the student can deduce the answers to a large number of choices, after being given the answer to the first choice. This process fits the hypothesis-testing approach to concept development, since the subject proceeds from a chance (or guess) level of behavior to observing, comparing, hypothesizing, recalling, eliminating, choosing , and organizing small incremental bits of information. Memory plays an important part in retaining the correct as well as the incorrect response.

These correct and incorrect responses become organized into subsets of what Congress can and cannot do. When the students read the appropriate section from the Constitution, their thoughts are reinforced and confirmed.

Likewise, the students can derive the powers of the President from what they already know by continuing the same process. Because they know that the power to lay and collect taxes belongs to Congress, it can be eliminated as a job that is performed by the President. Now the new information concerning enforcement of the laws can form a new subset of what the President can do. This new subset has two meanings, what Congress cannot do and what the President can do.

At the conclusion of the exercise the students have learned essential information and they have had the opportunity to develop and practice critical thinking behavior.

III - B. CHECKS AND BALANCES:
"Ambition Must be Made to Counteract Ambition"

OVERVIEW of the lesson: Not only did the Framers of the Constitution separate the powers of the national government into three separate branches, they also limited the exercise of these powers by giving to each branch checks over the activities of the other branches. Students use a series of problem solving exercises to learn several major checks each branch of government has over the other two branches. As each check is identified in the problem solving exercises, its authorization is verified by reading the appropriate section in the Constitution. Finally, the power is written into a checks and balances diagram.

Students who complete this lesson successfully will recognize several checks that each branch of the national government exercises over the other two branches.

The **PURPOSE** of this lesson is to teach students that almost anything that may be done by one branch of the government must take into account the need for cooperation from the other two branches. These checks, therefore, provide further assurance that no one branch of government becomes so powerful that it can deny liberties guaranteed to the people.

NECESSARY PREPARATION

1 - Duplicate the three **CHECKS AND BALANCES PROBLEM SOLVING** exercises.
2 - Duplicate **READING 1**.
3 - Duplicate the **CHECKS AND BALANCES DIAGRAM**.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Remind students that the concept of Separation of Powers provides Congress the power to make laws, the executive (President) the power to enforce laws, and the courts the authority to explain what the laws mean. But this separation, by itself, was not considered to be enough to ensure that one branch or one person would not become so powerful that they could deny liberties and rights of citizens. This lesson will examine how people in each of these three branches have checks on the powers of the people in the other branches	Listen and ask questions for clarification concerning the Separation of Powers concept.

TEACHER	STUDENTS
2 - Distribute the **CHECKS AND BALANCES PROBLEM SOLVING** handout. Explain that they will use three problem solving exercises to learn how each branch places checks on the power of the other branches. Explain the instructions at the beginning of the PROBLEM SOLVING exercises. Have students complete PROBLEM 1.	Understand the instructions for the PROBLEM SOLVING exercises. Complete PROBLEM 1.
3 - Handout **READING 1**. Have students find the words that verify the solution to the problem.	Find the words that verify their solution.
4 - Hand out the **CHECKS AND BALANCES DIAGRAM**. Have students write in the checks that Congress exerts over the President and the Supreme Court.	Write in a description of the checks that Congress has over the President and the Supreme Court.

Article I, Section 7, Clause 2 explains that Congressional action will not be effective as law until approved by the President--or until approved by two-thirds of both houses if vetoed by the President. Article III, Section 2, Clause 1 indicates that the Courts will determine whether the law will continue to be valid if someone claims that it is unconstitutional.

TEACHER	STUDENTS
5 - Have students solve PROBLEM 2. Use **READING 1** to verify the solution to the problem. Complete the Presidential checks column of the DIAGRAM.	Solve PROBLEM 2. Find the words in **READING 1** that verify the solution. Fill in Presidential checks over the Supreme Court and Congress in the DIAGRAM.

Article I, Section 3, Clause 6 explains that the President may be removed from office through impeachment and conviction by the Congress. Again, the courts can declare executive actions to be void if they are not authorized by the Constitution.

TEACHER	STUDENTS
6 - Ask students to solve PROBLEM 3. Again they are to verify the solution and comlete the segments in the DIAGRAM concerning the Supreme Court.	Solve PROBLEM 3. Find the words that verify the solution. Complete the remaining column in the DIAGRAM.

Article II, Section 2, Clause 2 shows that the Court is held in check by the executive branch because the President nominates new members and the Senate has the responsibility to approve or to reject the nominees of the President.

Also, the Constitution does not prevent the Congress from changing the size of the Supreme Court--decreasing it when there are vacancies, or enlarging it. The Supreme Court has been as large as ten and as small as six. In 1801, Congress actually lowered the size of the Court to five, but this legislation was rescinded by a new Congress before the demise of a sitting justice could allow the judicial act to become effective.

TEACHER	STUDENTS
7 - Ask students, "Why does each branch have checks on the power of the other branches?"	They should recognize that these checks are to ensure that no one branch or person becomes so powerful that they can deny citizens their rights and liberties.

CLOSING THE LESSON

Have students write answers to the following questions:

1 - What is the concept that we studied in this lesson?
2 - Define the concept.
3 - Give an example of the concept.
4 - Give a governmental non-example of the concept.

Responses like the following will inform you that students understood the concept of checks and balances.

1 - The concept studied in this lesson is called "checks and balances."

2 - Checks and balances is a phrase which means that each of the branches of government has some influence in the operation of the other branches.

3 - The President must approve a law proposed by Congress before it can go into operation. If the law is subsequently challenged as being a violation of the Constitution, the courts will determine the validity of the challenge.

The President nominates Justices to the Supreme Court, but they must be approved by the Senate.

The Congress may remove the President from office through impeachment; the courts can declare actions taken by the President to be null and void if the actions exceed the power given to the President by the Constitution.

4 - This answer will need to reveal an understanding that people in one branch of government can take actions that relate to their own branch without involving checks and balances. Examples might include: The Justices of the Supreme Court can hire their own clerks; members of Congress hire their own staff members; the President hires the members of the White House staff.

For an **additional closing exercise** to illustrate checks and balances, ask students to name the constitutional check or balance for each of the following actions:

1 - The president nominates a new Supreme Court justice.
2 - The president vetoes a bill passed by Congress.

3 - The president proposes a treaty.
4 - Congress passes a bill and the president signs it into law.

5 - Congress passes a bill.

The appropriate checks for the above would be:
1 - The senate must approve the nomination.
2 - Congress may override the veto by a 2/3 vote in both houses.
3 - The senate must approve of the treaty by a 2/3 vote.
4 - The Supreme Court may declare the action unconstitutional.
5 - The president may veto the bill and the Supreme Court may later nullify it, even if the veto is over-ridden.

CHECKS AND BALANCES
PROBLEM SOLVING

You have three problems to solve. Your first problem is to find out what Congress does to check the power of the President and the courts. You have three trials to solve this problem. In each trial you will read three or more sentences. After each group of sentences, you will see a plus (+) or a minus (-) sign. If you see a plus sign (+) that means only one of the three sentences is correct. If you see a minus sign (-) that means that none of the sentences is correct. Read the sentences in each trial remembering which sentence gives you information that will help you solve the problem. When you have read through each trial, use this information to answer the question at the end of the problem.

PROBLEM 1

TRIAL 1 - Congress can:
A - make treaties
B - pass laws over the President's veto by a 2/3 vote
C - appoint ambassadors

This trial is a plus (+)

TRIAL 2 - Congress can:
A - appoint ambassadors
B - appoint judges to the Supreme Court and other federal courts
C - make treaties

This trial is a minus (-). Go back to TRIAL 1 and decide what Congress can do.

TRIAL 3 - Congress can:
A - approve or reject nominations to the courts made by the President
B - appoint judges to the Supreme Court and other federal courts
C - make treaties

This trial is a plus (+).

TRIAL 4 - Congress can:
A - make treaties
B - appoint judges to the Supreme Court and other federal courts
C - vote to impeach the President

This trial is a plus (+).

COMPLETE THIS SENTENCE:

Members of Congress check the power of the President and the courts because they can:

1 - ______________________________ ,

2 - ______________________________ , and

3 - ______________________________ .

PROBLEM 2

Your next problem concerns the checks that the President has on the Congress and on the courts. Again, follow the plus and minus signs after each set of sentences that tell you if one or none of the sentences is correct.

TRIAL 1 - The President can:
A - veto laws passed by Congress
B - veto decisions of the Supreme Court
C - appropriate money
This trial is a plus (+).

TRIAL 2 - The President can:
A - veto decisions of the Supreme Court
B - appropriate money
C - conclude a treaty all by himself
This trial is a minus (-).

TRIAL 3 - The President can:
A - veto decisions of the Supreme Court
B - nominate judges to the Supreme Court
C - conclude a treaty all by himself
This trial is a plus (+).

TRIAL 4 - The President can:
A - veto decisions made by the Supreme Court
B - make (propose) treaties
C - conclude a treaty all by himself
This trial is a plus (+).

COMPLETE THIS SENTENCE:

The President can check the power of Congress and of the Supreme Court because he can:

1 - ______________________________

2 - ______________________________, and

3 - ______________________________.

PROBLEM 3

Your last problem concerns the checks that the Supreme Court has on the President and on Congress. As before, sometimes only one answer in each trial is correct and sometimes none of the answers is correct. Follow the plus (+) and minus (-) signs for guidance.

TRIAL 1 - The Supreme Court can:
- A - pass a law over the President's veto
- B - appoint ambassadors
- C - declare a law passed by Congress to be unconstitutional

This trial is a plus (+).

TRIAL 2 - The Supreme Court can:
- A - pass a law over the President's veto
- B - approve of treaties
- C - appoint ambassadors

This trial is a minus (-).

TRIAL 3 - The Supreme Court can:
- A - appoint ambassadors
- B - declare an action taken by the President to be unconstitutional
- C - approve treaties

This trial is a plus (+).

TRIAL 4 - The Supreme Court can:
- A - sit in judgment for all laws and treaties of the United States
- B - pass a law over the President's veto
- C - approve treaties

This trial is a plus (+).

COMPLETE THIS SENTENCE:

The Supreme Court can check the power of the President and of the Congress because the Court has the power to:

1 - ____

2 - ____, and

3 - ____.

Congratulations! You have solved the problems on your own. Now you can use this information to complete the chart that shows how one branch of government checks the others.

CHECKS AND BALANCES

DIAGRAM

	HOW DOES THE CONGRESS CHECK THE POWER OF	HOW DOES THE SUPREME COURT CHECK THE POWER OF	HOW DOES THE PRESIDENT CHECK THE POWER OF
THE PRESIDENT			
THE SUPREME COURT			
THE CONGRESS			

READING 1

ARTICLE I: THE LEGISLATIVE BRANCH

SECTION 2, CLAUSE 5. The House of Representatives shall...have the sole Power of Impeachment.

SECTION 3, CLAUSE 6. The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside...

SECTION 7, CLAUSE 2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve, he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law....

ARTICLE II: THE EXECUTIVE BRANCH

SECTION 2, CLAUSE 2. He [the President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Suprem Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for. . .

ARTICLE III: THE JUDICIAL BRANCH

SECTION 2, CLAUSE 1. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority. . .

The Constitution does not say that the national courts are authorized to exercise the power of **JUDICIAL REVIEW**--the ability to determine if actions taken by governmental officials violate the Constitution. Chief Justice John Marshall declared this to be a power of the Court in the case of Marbury v. Madison in 1803. Subsequently, the Court ruled that some actions taken by Congress and by the President violated the Constitution.

III - C. JUDICIAL REVIEW - The Courts Become More Powerful

OVERVIEW of the lesson: The Constitution did not provide explicit authority for the federal courts to exercise the power of judicial review --which is the authority to determine when governmental officials have violated the Constitution. This lesson focuses on the important United States Supreme Court decision that asserted this authority, Marbury v. Madision (1803). Then students judge whether the Supreme Court, exercising the power of judicial review, would determine whether a series of hypothetical actions taken by the President, Congress and state governments violate the Constitution.

Students who complete this lesson successfully will understand when and how the courts assumed the power of judicial review. They will also be able to recognize examples and non-examples of the exercise of judicial review by the courts.

The **PURPOSE** of this lesson is to teach students about the significant authority that is available to the courts to protect civil liberties through the exercise of the power of judicial review.

NECESSARY PREPARATION

Duplicate copies of: A - Hypothetical activities taken by Congress, the President, and the state of California,
B - **Sections from the Constitution**
C - **Marbury v. Madison**, and
D - **Lesson Evaluation**.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Distribute the handout that lists the hypothetical actions by Congress, the President, and the state of California. Ask students whether they think these actions are legal or illegal. (Only ask for their answers; do not indicate whether the answers are correct or incorrect.)	Indicate whether the actions are legal or illegal.
2 - Distribute the SECTIONS FROM THE CONSTITUTION handout. Ask students to read item 1. Ask them if it answers whether the hypothetical action taken by Congress is legal.	Respond that the actions are illegal.

TEACHER	STUDENTS
3 - Ask who has the authority to declare that the action is illegal (unconstitutional). Have students read item 2.	Read item 2. Attempt to find an answer. (It is not found in the Constitution.)
4 - Distribute the Marbury v. Madison handout. Ask students to write answers to the questions following the case.	Read the information. Provide answers to the questions.
5 - Mini-lecture that defines Judicial Review as follows:	Listen and ask questions for clarification.

The power to examine the constitutionality of actions taken by Congress and the President helped to make the courts a co-equal branch of the national government. It gave them the power to place a check on the actions of the other branches of government. This became an important part of the system of checks and balances.

TEACHER	STUDENTS
6 - Have students return to the initial handout that lists the hypothetical actions of the President and the state of California. Instruct them to read the remaining sections on the Constitution handout. Then, direct them to determine why the actions taken by the President and California, listed on the Handout, would be held to be illegal (unconstitutional) by the courts.	Read the Constitution sections and the Handout. Determine that the Presidents' actions would violate Amendment III and California's action would violate Amendment VIII.
7 - Mini-lecture regarding the power of Judicial Review and state governments as follows:	Listen and ask questions for clarification.

The ability of the federal courts to examine the constitutionality of actions taken by state governmental officials is important as a means to provide for a uniform, consistent interpretation of the Constitution throughout the United States. Without this authority, there could be fifty different interpretations of what a particular phrase of the Constitution means. In fact the judiciary used the power of judicial review in cases about state government actions before 1803. State laws were voided by U.S. Circuit Courts as early as 1791, and in 1796 the Supreme Court declared unconstitutional, a law passed by the Virginia state legislature in the case of Ware v. Hylton.

TEACHER	STUDENTS
8 - Remind students that the decision in Marbury v. Madison provided authority for **all** federal courts to check the actions of Congress and the President to determine whether they had violated the rules included in the Constitution.	Listen. Ask questions for clarification.

CLOSING THE LESSON

1 - Distribute the **LESSON EVALUATION** handout. Instruct students to write answers to the questions and hand them in for grading.	Write answers to the questions. Hand in for grading.
2 - Determine that the following answers have been provided:	

A - Numbers 1, 3, and 7 are examples of Judicial Review. (Note that, as in question 3, the Court is also exercising Judicial Review when it declares that an action is constitutional.)

B - The anagram solutions are:
  1 - The Constitution is the highest law in the United States.
  2 - Acts contrary to the Constitution are null and void.
  3 - The Supreme Court is the final interpreter of the Constitution.

C - FILL IN THE BLANK ANSWERS are:
  1 - Marbury v. Madison
  2 - John Marshall

SECTIONS FROM THE CONSTITUTION

ITEM 1

AMENDMENT XIX (Ratified in 1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex:

ITEM 2

ARTICLE III

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;...

ARTICLE VI

Clause 2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

ITEM 3

AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

ITEM 4

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Marbury v. Madison (1803)

BACKGROUND

The Constitution did not say that the federal courts have the power of judicial review (the power of judges to interpret the Constitution to determine whether actions taken by governmental officials violate the Constitution).

Congress passed a law in 1789 that authorized the United States Supreme Court to issue *writs of mandamus* (orders to a public official to do a job that is part of his responsibility). However, the case of **Marbury v. Madison** presented the issue of whether Congress had the authority to add to the original jurisdiction of the Supreme Court when this power had not been provided by the Constitution.

THE DECISION

The Supreme Court ruled, in an opinion announced by Chief Justice John Marshall, that Congress did not have the authority to grant this power to the Supreme Court. Marshall stated ... "an act of the legislature repugnant to the Constitution is void."

In addition, Chief Justice Marshall stated that "It is, emphatically, the province and duty of the judicial department, to say what the law is."

QUESTIONS

1 - Does the Constitution say that judges shall determine when governmental officials have violated the Constitution?

YES NO

2 - Did the Supreme Court, in the case of **Marbury v. Madison,** claim that they had the authority to determine when governmental officials have violated the Constitution?

YES NO

3 - If the Supreme Court determines that a law passed by Congress conflicts with the Constitution, what is the status of that law?

4 - What is the most important result of the decision in **Marbury v. Madison**?

LESSON EVALUATION

Place an "X" on the line before the statements that are examples of Judicial Review. Be prepared to explain the reason for your choices.

____ 1. The Supreme Court declares that prayer in school is unconstitutional.
____ 2. Congress proposes the Equal Rights Amendment.
____ 3. The Supreme Court upholds the death penalty.
____ 4. The Senate tries a spy for treason.
____ 5. The President vetos a bill sent to him by the Congress.
____ 6. California lowers the voting age to 17.
____ 7. The Supreme Court declares that states may not outlaw abortions.

ANAGRAMS: Unscramble the following words and place them in the correct order to make complete sentences.

1. is highest United States. the in Constitution law The

2. null Acts to void. and Constitution the contrary are

3. Constitution. of Court The is interpreter the Supreme the final

FILL IN THE BLANKS WITH THE CORRECT WORDS.

1. Judicial Review was established by a Supreme Court decision in the case called __________________ v ____________________ .

2. ____________ ________________ was the Chief Justice of the Supreme Court when the power of Judicial Review was established.

CONGRESS REMOVES
RIGHT TO VOTE
FROM WOMEN!!!

PRESIDENT ORDERS
SOLDIERS INTO
PEOPLE'S HOMES!!!

CALIFORNIA
SETS FINE FOR SPEEDING
AT $ 5,000

CHAPTER IV

Limited Government II

FEDERALISM

OVERVIEW: SUBSTANCE AND SEQUENCE

Federalism is a uniquely American political idea that was developed in the Constitutional Convention. Since state sovereignty had failed and a unitary system was unacceptable, what better solution than a division of powers between the states and the United States? Political philosophers continued to argue that sovereignty was indivisible, but the United States proved that power could be divided--thereby presumably providing a check on the ability of one level of government to become so powerful that it might place unreasonable restrictions on citizen liberties.

This critical feature of United States constitutional government is too often discussed superfically in history and civics textbooks. However, most students have developed an understanding of spacial relationships that permit them to grasp the critical features of this concept. Lesson IV-A teaches the **concept** of federalism and provides reinforcement through a variety of pedagogical approaches. Vocabulary, games, anagrams, metaphors and a mnemonic device are all used to help students understand the concept of federalism. All of these approaches are designed to demonstrate how powers are divided between the two levels of government.

This introductory lesson and Lesson III-C in the previous Chapter provide the background needed to understand fully the significant role played by federalism and the exercise of judicial review in the protection of civil rights and liberties during the past 200 years. The last two lessons in this chapter demonstrate the crucial importance of these two governmental principles in this process. Initially, as typified by the decision in Barron v. Baltimore in 1833, the Bill of Rights served only as a check upon the activities of the national government and not upon the exercise of power by state and local governments. Although many believed that the Fourteenth Amendment, added to the Constitution after the Civil War in 1868, would serve as the instrument to apply the guarantees of the Bill of Rights to the activities of state and local governments, the last lesson in this chapter demonstrates that this goal did not begin to become a reality until 1925. In subsequent years this process, known as incorporation of the Bill of Rights, diminished significantly the ability of state and local governments to deny their citizens the liberties enumerated in the Bill of Rights. Thus, as the Fourteenth Amendment served as the vehicle for changing the rules of the game and extending protections to citizens from state and local government actions, it provided what may be called a second Bill of Rights for the citizenry.

LESSONS IN THIS CHAPTER

IV - A. FEDERALISM -- The Power Needs to be Divided

IV - B. JUDICIAL REVIEW AND FEDERALISM: Who is Protected by the Bill of Rights?

IV - C. THE FOURTEENTH AMENDMENT AND THE SECOND BILL OF RIGHTS

IV - A. FEDERALISM: The Power Needs to be Divided

OVERVIEW of the lesson: The Framers of the Constitution created a governmental system of divided powers. This lesson describes the history leading to the development of federalism, provides a definition of federalism, gives examples of powers of both national and state governments, and presents a mnemonic phrase as an aid in remembering the definition of federalism. Students create a federalism metaphor as a means to demonstrate their understanding of the concept and to enhance their retention of the term and its meaning.

Students who complete this lesson successfully will be able to identify governmental functions that are performed by the national government and by state governments, as well as those functions that are shared by both the national and state governments.

The **PURPOSE** of this lesson is to teach students that the powers of government are divided between the national and the state governments. This division represents one important structural mechanism to protect the rights and liberties of citizens from the concentration of power in one location. The lesson is also designed to teach the idea of a CONCEPT.

NECESSARY PREPARATION

1 - Duplicate copies of the following handouts:

- A - **FEDERALISM, A BASIC FEATURE OF OUR GOVERNMENT**
- B - **MNEMONIC**
- C - **NATIONAL, STATE AND SHARED POWERS**
- D - GAME PIECES (Index cards in three different colors)
- E - **LEARNING THE HISTORY OF FEDERALISM**

2 - Decide how to divide the class into groups of four student per group.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Write the mnemonic on the board or on an overhead. Have each member of the group recite the mnemonic to others in the group.	Recite the mnemonic to other group members.
2 - Quiz students in round robin fashion, first using only the mnemonic, then what it means.	Answer when the teacher points to your group.

TEACHER	STUDENTS
3 - Distribute the reading: FEDERALISM, A BASIC FEATURE OF OUR GOVERNMENT. Ask students to read the paragraph and unscramble the words in the anagram. "Federalism is one of the basic features of our government."	Read the paragraph and unscramble the words in the anagram.

-- Inform students that the word Federalism is a concept. A concept has a name and critical parts.

One example that may be used to illustrate the idea of concept attainment is to point to a chair. Ask students, "What is this?"
They will respond, "A chair." (This is the name of the concept.)

Ask them, "What are the critical, essential parts of a chair?"
They will respond, "legs, seat, back" (These are the critical parts. (Remember that with only legs and a seat, but without a back you would only have a stool, not a chair.)

Ask them, "What is a non-example of a chair?"
They might respond, "a picture, car, apple, etc."

Ask them, "Why is your choice a non-example of a chair?"
They will respond, "Because it does not have a seat, legs and back." (These are the critical features that make a chair a chair.)

4 - Distribute the **MNEMONIC** handout. Tell students that this mnemonic summarizes the definition and critical feature of federalism. Have students read the definition and encourage them to ask questions if they do not understand the definition.	Read the definition and ask questions for clarification.

TEACHER	STUDENTS
5 - Ask students to say the mnemonic aloud to each other FIAPO - PID* SANG. Then study and discuss what is represented by each letter and symbol. Finally, from memory, they should fill in the missing words in the sentence listed at the bottom of the mnemonic page. (This takes time; don't rush this process.)	Say the mnemonic aloud. Study the meaning of each symbol in the mnemonic. From memory, fill in the missing words in the sentence.
6 - Distribute the page that lists examples of **National Powers, State Powers, Shared Powers** as well as **Non-examples of Federalism.** Have students read these examples.	Read the examples. Ask questions for clarification.
7- Distribute sets of four colored index cards to each group; national government is one color, state government is a different color, shared powers a third color, and finally a card which will represent a non-example of federalism.	Each group member gets a card.
8 - Use these sets of index cards to play the POWER GAME. The game may be played in a variety of ways, but the basic idea is that different examples of state, national or shared powers are read aloud by the teacher. The students raise the paper that has the appropriate color. The game can be varied, using individuals or teams as well as having students call out examples to their peers.	Answer questions in the POWER GAME by holding up the correct colored paper. When the teacher calls out a power or non-power the group will consult and on the count of three each group will hold up the appropriate card.
9 - Ask students if they recall how a person can recognize when federalism is involved.	Respond by naming the critical feature in the mnemonic: FIAPO-PID* SANG
9 - Distribute the handout titled: **LEARNING THE HISTORY OF FEDERALISM.** Have the class read the history together. Ask students, working in groups, to write the summary sentences requested at the end	Read the history together. Write, in groups, the summary sentences requested at the end of the reading.

TEACHER	STUDENTS
10 - Ask a spokesperson for each group to write their sentences on the board.	Group representatives write sentences on the board.

Be certain that they recognize that Step 3 (where the national government and the state governments both have separate powers) is a combination of Step 1, a unitary system (where the central government has final authority on all issues) and Step 2, a confederation government (where the local units have final authority on all issues).

11 - Distribute the instruction sheet for **CREATING A FEDERALISM METAPHOR.** Ask students, either individually or in groups, to write a federalism metaphor.	Individually, or in groups, write a federalism metaphor
12 - Have students share their metaphors with the class. (You may want to place some on the bulletin board.)	Share metaphors with the class.

The purpose of having the students create and explain a metaphor is to check their understanding of the concept of federalism. It a student can create a metaphor, then it is very likely that the student has developed some genuine understanding of the concept of federalism.

You might introduce the idea of a metaphor by using the following example: "Teachers are giraffes. They need to keep their heads up high to be on the lookout for problems."

13 - For a quick review, write the mnemonic on index cards. Have students line up in order to complete the sentence. (Use different colored cards so that all students may participate. Keep sets separate by storing in envelopes for future use.)	Line up in order to complete the sentence.

CLOSING THE LESSON

Have students write answers to the following questions:

1 - What is the concept that we studied in this lesson?
2 - What is the critical feature of the concept that we studied in this lesson?
3 - Provide an example of the critical feature of the concept.
4 - How is a system of federalism related to the protection of the rights and liberties of citizens?

Responses like the following will demonstrate that the students understand federalism and its purpose.

1 - Federalism is the concept that we studied in this lesson.
2 - Federalism is a principle of organization in which power is divided between the state and national governments. **FIAPO-PID* SANG**
3 - The national government has the power to declare war and make laws for the entire nation, while the state governments establish marriage laws and laws for driving vehicles. Both governments can tax the people.
4 - Federalism divides the power between the state and national governments so that no one of them can become all powerful and take away the rights and liberties of the citizens.

MNEMONIC

FIAPO - PID* SANG

F = Federalism

I = is

A = a

P = principle

O = of organization

- = in which

P = power

I = is

D = divided

* = between the

S = state

A = and

N = national

G = governments

The following sentence has some words missing. See if you can make the sentence complete by filling in the missing words.

Federalism is a ____________ of ______________ in which

_________ is ____________ between the ______________

and _____________ governments.

FEDERALISM, A BASIC FEATURE OF OUR GOVERNMENT

Look at some of the coins which we use in our country. You will see that all of our coins are United States coins. Sad as it may seem, there are no California coins or ____________ (your state) coins! But if you look at your parents' marriage certificate, you will see that their marriage was legalized under the laws of the State in which they lived when they were married. If you stop to think about it you will discover that there are many things which are only done by our national government, and others which are only done by our state government. Of course there are also some governmental activities which are done by both our national and state government. The purpose of our work today is to learn about federalism, one of the basic features of our government. Federalism is an idea or concept, a principle of organizing government activities so that power is divided between the national and the state governments.

The words in the sentence below are mixed up. Can you put them in the correct order so that they make sense?

features is our of one government. the Federalism of basic

National Powers

1. Coining money and regulating its value.

2. Setting standards of weights and measures. For example, size of gallon, length of a foot.

3. Creating and organizing an army, navy, and air force.

4. Setting the rules for becoming a citizen and rules for who may travel across national boundaries.

5. Declaring war and signing peace treaties.

6. Establishing post offices.

7. Making laws for the entire nation.

8. Regulating interstate commerce.

9. Establishing national taxes such as the income tax or federal excise taxes on certain products.

State Powers

1. Regulating people and property for the welfare of the public. For example, establish marriage laws, health regulations, and laws which set up schools. Also laws for driving and the legal age for adult activities. This also includes the police power to regulate peoples' behavior in the interest of public safety and welfare.

2. Regulate business and commerce within the state. Make laws regarding types of business, rules for safety.

3. Establish the form of state and local city governments. Cities are given permission to conduct local government by the State government.

4. Tax and spend funds for the public welfare and good.

Shared Powers

1. Both have the power to tax and spend funds.

2. Both have the power to provide services to the people.

3. Both have the power to take property for the public good.

Non-examples of Federalism

1. The term of office of the president.

2. Political parties like the Democrats and Republicans.

3. A person accused of a crime is entitled to due process of law.

4. The President appoints a member of the Supreme Court.

LEARNING THE HISTORY OF FEDERALISM

You have been studying the concept of federalism. So far you have learned the definition, some examples and non-examples, and the critical feature. Now we will study some of the history of federalism.

Federalism did not just happen. It came into existence over a long period of time. We will study three important steps which led to the development of federalism in the United States.

STEP 1: GOVERNMENT UNDER THE KING AND PARLIAMENT

The relations between the English government and the thirteen colonies which later formed the United States got the people used to a "federal" type of government; the English government took care of national defense and foreign affairs, and the colonies took care of domestic matters. However the government was a unitary system because the King and Parliament had the authority to order the colonies to take the actions they wanted them to take.

STEP 2. GOVERNMENT AFTER THE DECLARATION OF INDEPENDENCE

When the colonies won independence, they came together under the Articles of Confederation. The colonies became states. In this new government the states had the final authority to make decisions; they decided how much power would be given to the national government.

STEP 3. GOVERNMENT UNDER THE CONSTITUTION

The delegates to the Constitutional Convention voted to change the confederation plan of government to a federal plan. Under the new Constitution the principle of federalism was established as a basic and important principle of organization in our government. This plan gave the national government some powers, the state governments some powers, and the national government and the state governments shared some powers. This plan represented a new political idea that had not been used before by any other government.

These steps occurred over a long period of time. The principle of federalism came into existence not so much as a deliberate choice but as the result of experience and the work and thoughts of many different people. The concept of federalism has undergone change as each generation of Americans faced new tensions and problems. Yet the principle of federalism still remains a basic feature of our government.

EXERCISE:

The history of federalism is important. One way that you can show that you understand this reading is to give a name to each of the steps in the history of federalism. Reread each step. Ask yourself: **What is the big idea in this step?** Then write a title which you think expresses the big idea for that step.

STEP 1. ____________________

____

STEP 2. ____________________

____

STEP 3. ____________________

____

CREATING A FEDERALISM METAPHOR

You have learned many things about federalism, but what does it all mean? What is federalism? You will now have an opportunity to demonstrate your understanding of federalism by creating a metaphor which illustrates the concept.

When creating a metaphor, you will transfer the ordinary meaning of the term federalism to a term that you believe federalism resembles. For example, you might say that "Federalism is a school." This is the case because the teacher and the principal both make decisions about what is to happen in the classroom, but sometimes the principal can overrule the teacher.

A metaphor allows you to express ideas and understandings in surprising and delightful ways. It is suggested that you follow these steps in creating your metaphor.

1. Brainstorm a list of ideas: Federalism is . . . (animals, machines, land shapes, plants, liquids etc.) that you think express or tell about federalism or division of powers.
2. Pick one idea from your list as the basis for your metaphor. Then state that: Federalism is like . . . (the name of your idea).
3. Write an explanation which tells why you think you have a good metaphor for federalism.
4. You may wish to draw a picture that illustrates your metaphor.
5. Check to see that your explanation is consistent with the meaning of federalism which we have learned.

IV - B. JUDICIAL REVIEW AND FEDERALISM: To Whom Shall the Bill of Rights Apply?

OVERVIEW of the lesson: The opponents of the Constitution, who came to be known as Antifederalists, feared that the national government would become too powerful and thus deprive citizens of their liberties. Therefore they viewed the Bill of Rights as a guarantee that citizens had against the use of power by the national government. However, as time progressed, people brought claims to the federal courts saying that the provisions of the first eight amendments should also protect them from actions taken by their state governments. Initially in this lesson, students will review the concepts of **judicial review** and **federalism**. Then they will apply these principles as they analyze the seminal U.S. Supreme Court case of Barron v. Baltimore (1833) to determine whether guarantees listed in the Bill of Rights provided citizens with protections from their state and local governments.

Students who complete this lesson successfully will understand that the decision in Barron v. Baltimore upheld the common consensus of that day which said that guarantees against government action listed in the Bill of Rights protected citizens only from actions taken by the national government.

The **PURPOSE** of this lesson is to teach students about the relationship between the concepts of federalism and judicial review as they interacted to determine that, originally the Bill of Rights only protected citizens from the actions taken by the national government.

NECESSARY PREPARATION

1 - Determine how students shall be divided into groups for group work.
2 - Duplicate copies of: A - **BACKGROUND AND FACTS**
B - **Barron v. Baltimore decision**
C - **LESSON EVALUATION**

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Write the words **JUDICIAL REVIEW** and **FEDERALISM** on the board. Ask students to explain their meanings. (Refer to Lessons III-C and IV-A respectively for these definitions.)	Volunteer an explanation of **JUDICIAL REVIEW** and **FEDERALISM**.

TEACHER	STUDENTS
2 - Explain to students that this lesson will examine how the U.S. Supreme Court, using the power of Judicial Review, made a decision in 1833 whether the liberties in the Bill of Rights protected citizens from actions of their state and local governments as well as those of the national government.	Listen and ask questions for clarification.
3 - Distribute the **Barron v. Baltimore** handout. Ask students to read the BACKGROUND and FACTS section. Then working in groups, have them write answers to the questions that follow the reading.	Read the BACKGROUND and FACTS section. Working in groups, answer the questions that follow the reading.
4 - Ask volunteers from the groups to share their answers. (Be certain that they realize that a city government took the action and that Barron was asking for relief based upon a provision in the Fifth Amendment in the Bill of Rights.)	Volunteers share their answers.
5 - Have students write an answer to the question in the YOU BE THE JUDGE section.	In groups, determine their decision and its justification.
6 - Ask selected students to share their decision and its justification. (They will probably decide, based upon the provision in the Fifth Amendment, that Barron should be compensated.)	Selected students share their decision and its justification.
7 - Distribute the Barron decision. Have students read the decision and write answers to the questions that follow.	Read the decision and write answers to the questions.

TEACHER	STUDENTS
8 - Have students share their answers.	Share what they have written.

--Note that there were two main questions: (A) Does the court have authority (jurisdiction) to hear the case? and (B) Do the guarantees in the Bill of Rights apply to the state and local governments? If the answer to the second question is "NO," then the court does not have a right to hear the case because, in effect, there is no case.

--When the Bill of Rights was added to the Constitution in 1791, it was generally agreed that the provisions would restrain the national government only. Thus Barron could claim no violation of his constitutional rights unless there was a similar provision in the Maryland state constitution. In that event he would need to file a suit in the state court to have his case heard.

--Inform students that it was not until after the 14th Amendment was added to the Constitution in 1868 that an effort was again made to have the guarantees listed in the Bill of Rights applied to the states. Lesson IV - C. concerns the first successful attempts to achieve this objective.

CLOSING THE LESSON

Have students complete the **LESSON EVALUATION**.

Answers such as the following will demonstrate that the students have understood the main points in the lesson:

1 - Barron v. Baltimore

2 - The city of Baltimore repaired their streets.

3 - This resulted in making the water in the harbor shallow so that large ships could not sail into Barron's wharf. Therefore his business lost a lot of money.

4 - He argued that the Just Compensation Clause of the Fifth Amendment applied. It requires that the government pay a fair price for private property that is taken for public use.

5 - The Supreme Court needed to decide whether Barron was entitled to money from the City of Baltimore. This depended upon whether the guarantee in the Fifth Amendment applied to the action of the city government.

6 - The provisions in the Bill of Rights only apply to actions taken by the national government. Therefore the U.S. Supreme Court could not hear Barron's claim.

7 - The Bill of Rights was added to the Constitution in order to protect the people against actions by the national government. The court decision merely confirmed this generally accepted understanding.

BACKGROUND AND FACTS
Barron v. Baltimore (1833)

John Barron was the co-owner of a wharf on a harbor in Baltimore, Maryland. The owners were paid money by ship owners, who docked at their wharf to unload goods that were stored in warehouses.

Beginning in 1815, the city of Baltimore began to repair the streets. The street project also changed the flow of streams coming into the harbor. This resulted in deposits of sand and dirt in the harbor that made the water so shallow that large ships could not sail into Barron's wharf. Therefore, his property became of little value and his business lost money.

In 1822, Barron sued the city of Baltimore for damaging his property. He argued that the Fifth Amendment, which does not allow the national government to take private property for public use, without just compensation (payment of a fair price), also did not allow the states (and local governments) to take private property for public use, without just compensation. Officials of the city of Baltimore claimed that their actions were authorized by the city's charter that permitted the city to pave the streets and regulate the harbor in the interests of the health of the city. The County Court awarded Barron $ 4,500 in damages. However, an appellate court reversed this decision; thus, Barron received nothing. So, he appealed to the U.S. Supreme Court.

1 - What level of government was involved in this case?
____

2 - Why was Barron complaining? ______________________________
____

3 - Why did Barron believe that he should be paid? __________________
____

YOU BE THE JUDGE

If you were a member of the U.S. Supreme Court when this case was heard in 1833, what would you decide? Explain the reason for your answer.

THE UNITED STATES SUPREME COURT DECISION

Following are some portions of the unanimous decision of the U.S. Supreme Court, written by Chief Justice John Marshall.

The question thus presented is, we think, of great importance, but not of much difficulty.

The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual States. Each State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. . . .

If these propositions be correct, the fifth amendment must be understood as restraining the power of the general government, not as applicable to the States. . . .

We are of the opinion that the provision in the fifth amendment to the Constitution, declaring that private property shall not be taken for public use without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the States. . . .

This court, therefore, has no jurisdiction of the cause, and [it] is dismissed.

---

1 - What did the U.S. Supreme Court decide? ______________________________

____

____

2 - What reasons did Chief Justice Marshall give to explain the decision:

____

____

____

3 - How does this decision involve Judicial Review?

____

____

4 - How does this decision involve Federalism?

____

____

LESSON EVALUATION

1 - What is the name of the U.S. Supreme Court decision that we studied in this lesson?

2 - What action was taken by the city of Baltimore?

3 - How did this action affect Mr. Barron?

4 - Tell what words in the Bill of Rights Mr. Barron believed protected him from the actions taken by the city of Baltimore.

5 - What were the main issues before the U.S. Supreme Court?

6 - What answers did the U.S. Supreme Court provide to these issues?

7 - Why do you think the U.S. Supreme Court decided the case against Barron?

8 - How are Judicial Review and Federalism involved in the decision in this case?

IV - C. THE 14th AMENDMENT AND THE SECOND BILL OF RIGHTS

OVERVIEW OF THE LESSON: Some scholars have argued that the Fourteenth Amendment, added to the Constitution in 1868 as a part of post-Civil War Reconstruction, was intended to overturn the decision in Barron v. Baltimore and thus hold the state and local governments to the guarantees in the Bill of Rights. Others have argued that this was not the intent of the amendment's framers. Whatever the truth of the matter, the fact is that the amendment, with the Supreme Court's concurrence, was not used to apply the provisions of the Bill of Rights to state and local government actions until the 1920s.

This lesson focuses on (A) the words in the Fourteenth Amendment that say "No State shall...", (B) the failed effort in 1908 in Twining v. New Jersey to extend the protections of the Fifth Amendment to an action by a state government, and (C) the decision in Gitlow v. New York (1925) that began the process known as incorporation of the Bill of Rights.

Students who complete this lesson successfully will recognize that a constitutional amendment may change the meaning of the Constitution and that the Court's interpretation of the Constitution may change as times and conditions within society change. Students will also be reminded about the significant role that federalism and judicial review play in protecting rights and liberties in America.

The **PURPOSE OF THIS LESSON** is to teach the concept of "Incorporation" and the significant function of the Fourteenth Amendment in securing rights and liberties for persons of all races and creeds in 20th Century America.

NECESSARY PREPARATION

1 - Decide how to divide the class into groups of three.
2 - Duplicate handouts concerning:
  COMPARISON: The Fourteenth Amendment and the Bill of Rights
  Twining v. New Jersey and **Gitlow v. New York**
  LESSON EVALUATION
  CASE SHEET

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Ask students to recall the decision of the Supreme Court in the 1833 case of *Barron v. Baltimore.* Ask them to identify the consequences of this decision for the protection of citizen's rights and liberties.	Volunteer responses that point out the *Barron* guideline and the consequences of that decision.

Lesson IV - B explains that the *Barron* decision acknowledged the general belief that the provisions of the Bill of Rights were limitations on the use of power by the national government only. State and local governments were able to deny liberties to their citizens if a majority of the people wished to do so, and if their state constitution and judges did not prevent them from denying these liberties.

The struggle between national and state powers, inherent in a federal system, continued on up until the Civil War. The war resulted from some states (the southern slave states) believing that they had both the right and the power to secede from the national union. These states' loss to the Union armies led to an increase in national power. The Reconstruction Amendments to the U.S. Constitution were created to exert that power over the states which lost the Civil War.

2 - Distribute the **COMPARISON** selection. Ask students to read the 1st Amendment selection at the top of the page and the 14th Amendment excerpt on the bottom half of the page. Then they are to write a brief response to the questions that follow.	Read the selections. Write a brief response to the questions.
3 - Ask students to share what they have written.	Volunteers share responses.

Assist students to recognize that the Fourteenth Amendment extends "privileges and immunities", "due process of law", and "equal protection of the laws" to the states, thus restricting the activity of State (and local) governments that would deny rights to their citizens. The Bill of Rights, on the other hand, places restrictions on the activities of Congress (a part of the national government).

4 - Distribute the **Twining v. New Jersey** and **CASE SHEET** handouts. Ask students, working in groups of three, to read the case and fill out the **CASE SHEET**.	Read the paragraphs. Then, group members--numbered 1, 2, and 3 fill out their portion of the **CASE SHEET**.
5 - Ask representatives of the groups to share their answers. Fill out the **CASE SHEET** on an overhead projector or on the board.	Representatives of the groups share their answers.

Be certain that students recognize the continuity of this decision with Barron. The decision in this case followed the same reasoning that was used in Barron; however, the Twining court added a condition that would provide a basis for a future court to reach a different conclusion.

6 - Share the Court Decision and the Historical Background with the students. Ask students to identify the most significant component of the decision.	Attempt to identify the most significant component of the decision.

COURT DECISION: In an 8-1 decision, Justice William Moody speaking for the Court in Twining said, "If the right here asserted is not a Federal right, that is the end of the case.... The question before us is the meaning of a constitutional provision which forbids the States to deny any person due process of law.... We have to consider whether the right is so **fundamental** in due process that a refusal of the right is a denial of due process.... [W]e think that the exemptions from compulsory self-incrimination in the courts of the States is not secured by any part of the Constitution."

HISTORICAL BACKGROUND: This decision seems to contradict the provisions of the 14th Amendment which were supposed to have transferred Bill of Rights "due process of law", in this case those of the 5th Amendment, to the states. What had happened between 1868 and 1908 to cause this change of outlook?

1 - Reconstruction was ended by 1877 as the last Union troops were pulled from the Southern States. The old aristocracy soon returned to political power and began to create a legal system to segregate Black and White Americans. These leaders supported a States' Rights agenda and opposed interference by the national government.

2 - Emerging business interests throughout the country supported those politicians who promised to prevent regulation of their industries by the national government. They too supported a States' Rights approach.

Appointees to the Supreme Court in the late 1800s carried this States' Rights outlook; The Twining decision reflects this political reality. To these Justices, a right had to be "fundamental" in order to be applied to the states.

---

7 - Ask students for the added condition. (If the right is FUNDAMENTAL, it should also apply to the states.)	Respond with the added condition.
8 - Distribute the **Gitlow v. New York** handout. Have students, working in groups, read about the case and fill out their portion of the **CASE FORM**.	Read the case. Working in groups, fill out their portion of the **CASE FORM**.
9 - Ask selected representatives of the groups to share their assigned portion.	Selected representatives share their assigned part.
10 - Share the COURT DECISION with the students. Ask them to discover how it differs from and builds upon the decision in Twining.	Discover how the decision differs from and builds upon the decision in Twining.

COURT DECISION: The U.S. Supreme Court concluded, "For present purposes we may and do assume that freedom of Speech and of the press--which are protected by the First Amendment from abridgment by Congress--are among the fundamental rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States. . ."

Thus Gitlow began the process whereby much of the Bill of Rights, starting with the First Amendment, became regarded as "fundamental", and so applicable to the states as provided under the 14th Amendment.

--Lead the students to an understanding of the progression from Barron to Gitlow. In Barron, the Court relied on the general consensus of the day to conclude that the Bill of Rights was not intended to restrict the State and local governments. Remember the First Amendment begins with the words: "**Congress** shall make no law...." The addition of the Fourteenth Amendment provided an opening for applying the Bill of Rights to the states: "No **State** shall...." Twining said that the provision should apply only if the liberty involved is so **fundamental** that it would deny due process of the law. In Gitlow freedom of speech is consider to be fundamental. Therefore the U.S. Supreme Court was willing to hear Gitlow's case.

Unfortunately for Mr. Gitlow, his form of speech was so extreme that the Supreme Court decided it was not protected by the First Amendment, so he lost his case.

HISTORICAL BACKGROUND: The States' Rights outlook of the Supreme Court had changed by the 1920s when the Gitlow decision was made. Reform minded Progressives came to power at state and national levels of government in the early 1900s, including Theodore Roosevelt and Woodrow Wilson who rose to the Presidency. The Progressives supported greater power for the national government, particularly regarding the regulation of business. They appointed Supreme Court Justices who were amendable to greater national power and extended civil liberties. So began the **incorporation** of the Bill of Rights, via the authority of the 14th Amendment, over the states.

CLOSING THE LESSON

Have students complete the **LESSON EVALUATION**.

COMPARISON: The 14th Amendment and the 1st Amendment

The FIRST AMENDMENT (1791)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

THE FOURTEENTH AMENDMENT (1868)

Part of Section 1 of the Fourteenth Amendment includes the following statement:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

1 - What level of government is prohibited from acting in this amendment?

2 - How do the words in this amendment differ from the words at the beginning of the First Amendment?

3 - How is this amendment related to the concept of federalism?

Twining v. New Jersey (1908)

Albert Twining was an officer of a bank. New Jersey charged Twining and other bank officiers with fraud. At his trial in the state court, Twining refused to testify by claiming the Fifth Amendment privilege against self-incrimination that says: "No person... shall be compelled in any criminal case to be a witness against himself...." While the judge allowed Twining not to testify, he gave the jury reason to conclude that refusing to testify may imply that a person is guilty. The jury found Twining guilty.

After the New Jersey Supreme Court upheld his guilty verdict, Twining appealed to the U.S. Supreme Court. He argued that the due process clause of the Fourteenth Amendment required that the self-incrimination guarantee in the Fifth Amendment should protect his right to a fair trial in state courts. New Jersey responded by saying that, although Twining would have the right to refuse to testify against himself if the case was tried in a federal court, this provision in the Fifth Amendment of the Bill of Rights is not a limitation on trials that are held in state courts.

Gitlow v. New York (1925)

The New York legislature passed a law in 1902, called a Criminal Anarchy Statute, that made it a crime to join any organization that taught or advocated "the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means."

Benjamin Gitlow was a member of the Socialist party. In 1919 he was charged with violating the Criminal Anarchy Statute. He was indicted for advocating, advising and teaching the duty and necessity of overthrowing organized government by force, violence, and unlawful means. He was tried and found guilty in New York courts. Gitlow then appealed to the U.S. Supreme Court.

Gitlow argued that the liberty protected from state government action by the Fourteenth Amendment included the First Amendment liberty of speech and of the press. The state of New York responded by saying that the First Amendment does not place limitations on the State governments when First Amendment freedoms are involved.

LESSON EVALUATION

1 - What are the first five words of the First Amendment in the Bill of Rights?

2 - What level of government is the subject of the Fourteenth Amendment (1868)?

3 - What important word was used in Twining v. New Jersey (1908) to describe the kind of rights and liberties that are listed in the Bill of Rights that could protect citizens from actions taken by their state and local governments?

4 - What important rule was announced by the U.S. Supreme Court in the case of Gitlow v. New York (1925)?

5 - Explain how federalism is involved when determining the rights and liberties that are guaranteed to citizens by the Bill of Rights at different times in United States history.

6 - If you were a Right, would you like to be a "fundamental" Right? Explain.

CASE SHEET

Name of the Case ______________________________

Year of the Case ____________________

Student Number 1	Student Number 2	Student Number 3
The argument presented by the first party in the case was:	The argument presented by the second party in the case was:	Who do you think should win? Why?

THE COURT'S DECISION:

HISTORICAL BACKGROUND:

CHAPTER V

FIRST AMENDMENT LIBERTIES

OVERVIEW: SUBSTANCE AND SEQUENCE

With the 1925 decision in Gitlow v. New York, the U. S. Supreme Court began the process of applying the provisions of the First Amendment to the activities of state and local governments. Thus, the fundamental freedoms of speech, press, and religion were "incorporated." Seemingly, therefore, with incorporation no level of government would be able to deny citizens the freedom to enjoy these basic liberties.

As might be expected, many people filed suits in federal courts claiming that state and local government activities infringed upon their freedom of speech, press, or religion. The U.S. Supreme Court was asked, as the ultimate interpreter of the Constitution, to define the meaning of these words as well as the circumstances when actions taken by these governments denied citizens their fundamental liberties. The process of developing tests to determine when citizens are afforded protection by the provisions in the First Amendment is the focus of this Chapter.

The first two lessons involve the Establishment of Religion and the Free Exercise Clauses, respectively. Lesson V - A. familiarizes students with the "Lemon" test. It is used frequently by the courts to determine whether government aid to schools violates the Establishment Clause. In lesson V - B., use of the compulsory flag salute in public schools represents an activity testing the meaning of the Free Exercise of Religion Clause.

Freedom of Speech and Freedom of the Press are the subjects of the final three lessons in the Chapter. Because these liberties are central to the ability of citizens to participate in government in a democratic society, students need to understand the limits placed upon the exercise of these rights as well as the protections that have been extended to citizens in the 20th Century, that expand the ability of citizens who wish to exercise these liberties.

Lessons V - C. and V - D. outline the basic guidelines developed by the U.S. Supreme Court that are used to determine protections afforded to citizens in the areas of free speech and free press. The final lesson in the chapter provides an opportunity for students to apply their knowledge about the limitations that governments may place upon what the press may publish.

LESSONS IN THIS CHAPTER

V - A. THE "LEMON" TEST AND THE ESTABLISHMENT CLAUSE

V - B. RELIGIOUS BELIEFS AND THE FLAG SALUTE

V - C. FREEDOM OF SPEECH: What are the Limits?

V - D. FREEDOM OF THE PRESS: Defining the Limits

V - E. FREEDOM OF THE PRESS: An Application

V - A. THE "LEMON TEST" AND THE ESTABLISHMENT CLAUSE

OVERVIEW of the lesson: It is generally agreed that the First Amendment phrase "Congress shall make no law respecting an establishment of religion", prohibited the establishing of a national religion. However, it was the U.S. Supreme Court that developed tests, starting with the Everson case in 1947 (when the Establishment Clause was incorporated), that are used to determine whether specific activities in the public schools violate the Establishment Clause.

Students who complete this lesson will learn how to apply the "Lemon test", announced by the Court in 1971, by expressing in writing a correct decision with an acceptable justification for two school situations concerned with the Establishment clause.

The **PURPOSE** of this lesson is to teach students about a major test that is used by the courts to determine what activities in the public schools violate the First Amendment Establishment of Religion Clause.

NECESSARY PREPARATION

1 - Obtain enough lemons so that each group of three students will have one to use. (Alternatively, provide each trio with a picture of a lemon drawn on a sheet of paper.)
2 - Prepare an overhead transparency of the Establishment Clause cartoon. (Alternatively, duplicate copies for each student in the class.)
3 - Duplicate copies of: (A) **THE "LEMON TEST" STATEMENT** and explanation,
  (B) **"LEMON TEST" SCHOOL CASES**, and
  (C) **THE "LEMON TEST" AND ESTABLISHMENT CLAUSE APPLICATION**

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Write the following words on the board: CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION. Display the cartoon on an overhead transparency (or distribute copies to each student). Ask them to study the cartoon to determine the central meaning.	Study the cartoon to determine what the cartoon means.

TEACHER	STUDENTS
2 - Ask students to explain the central issue of the cartoon. What specific details in the cartoon and its caption support this central issue?	Volunteer an explanation of the central issue and the evidence that led to that conclusion.

-- The central idea is that prayers are not to be promoted in the public schools. This is conveyed by the words "trouble" and "praying" in the caption and the worried look on the faces of the students, plus the teacher's angry facial expression.

TEACHER	STUDENTS
3 - Have students refer to the statement below the cartoon regarding the purpose of the establishment clause.	Read the statement regarding the purpose of the establishment clause.
4 -Ask students to refer back to the cartoon and determine whether it illustrates a violation of the Establishment Clause. Ask volunteers to respond.	Determine whether the cartoon demonstrates a violation of the Establishment Clause; volunteer your response.

-- No violation is illustrated because religion in the form of prayer is not allowed in the classroom. In one sense, of course, this is misleading because any student may pray him/herself. It is prayer as an **organized** religious activity that is prohibited by U.S. Supreme Court guidelines.

Inform students that prayer is only one of several activities in the public school that is prohibited by the Establishment Clause. In the lesson that follows you will learn about a test that is used by the courts to help decide what activities are permitted by the Establishment Clause of the First Amendment. Then you will demonstrate your ability to apply the test by expressing in writing a correct decision and a proper justification for two activities in the school that concern the Establishment Clause.

TEACHER	STUDENTS
5 - Divide the class into groups of three. Then students are to letter off as A,B,C.	As a member of a trio, each becomes designated as either A, B, or C.

TEACHER	STUDENTS
6 - Distribute copies of the **LEMON TEST STATEMENT**. Ask students to read the selection and be prepared to explain the meaning of the LEMON TEST. Have them note the words in parentheses.	Read the **LEMON TEST STATEMENT** and prepare to explain its meaning.
7 - Ask students how the words in parentheses relate to the LEMON TEST. Ask if they have discovered that the first letter in these words spell LEMON.	Explain the relationship of words in parentheses to the LEMON TEST.
8 - Distribute a lemon to each group. Have them write the words in parentheses on the lemon so that it looks like this: L _ _ E _ _ _ _ _ M _ _ _ _ _ _ _ _ O _ _ _ _ _ N _ _ _ _ _ _	Place the words in parentheses on the lemon in the manner described. Learn these words.
9 - Distribute the **LEMON TEST SCHOOL CASES** handout. Instruct members of each trio to share orally the application of the LEMON TEST to cases 1 through 6 according to the instructions in the chart.	Determine the roles that each member of the trio is to perform for each of the 6 cases. Apply the LEMON TEST to the 6 cases to determine whether they violate the Establishment Clause.
10 - Ask selected students from the trios to share their decisions and justifications for the decisions. (Note that each member of the trio should find one activity that is a violation and one activity that is not a a violation of the Establishment clause.)	Selected students share their decisions and the rationale for them.

-- The following chart provides information that the students might use for reaching their conclusions.

Case Number	Information Suggesting Proper Religious Involvement	Information Suggesting Improper Religious Involvement	Final Decision and Justification
1	Bible used to teach grammar not religion	Bible, a religious book, used in class	OK - Bible used for non-religious purpose
2	Catholic test used to teach science, not religion	Test expresses Catholic viewpoint regarding science issues	VIOLATION - test is not neutral - but pro-Catholic
3	Counseling done off school grounds, after school hours	Students counseled by religious person hired by school	VIOLATION - due to school hiring a minister
4	Prayer was suggested, not required, silent, and outside of class	Religious behavior, in form of prayer, part of school activity	VIOLATION - teacher led activity in support of religion
5	Books involved are standardized and not religious	Books come from a church	OK - Books are standardized and neutral toward religion
6	Words are part of traditional civil religious practices	Religious word "God" is part of school activity	OK - Purpose of word is partriotic, not religious

11 - Assign each trio one of the 6 cases and ask them to change the features so that the result is the opposite when the LEMON TEST is applied, (i.e. the violations become appropriate, and the appropriate cases become violations).	Each trio changes the features of the case so that the result is changed when the test is applied.
12 - Ask a representative from 6 of the trios (one who represents each of the 6 cases) to write their suggested change on the board.	Designated students write their suggested change on the board.
13 - Ask the class whether the suggested changes do in fact lead to a different result when applying the LEMON TEST. Explain why.	Explain why the suggested change does or does not change the result when the LEMON TEST is applied.

CLOSING THE LESSON

Distribute **THE "LEMON TEST" and ESTABLISHMENT CLAUSE APPLICATION** handout. Have students write answers to the questions.

Answers such as the following will inform you that the students understand the LEMON TEST as a means that is used to determine whether there has been a violation of the First Amendment Establishment Clause in the public school context.

CASE 1 - This situation passes the LEMON TEST.

-- **Lay Purpose** - Even though the trip and the presentation are somewhat religious (to a mission, talk by a priest), the primary purpose is historical rather than religious.

-- **Easily Monitored** - With teachers present, it can be guaranteed that the experience will focus on the historical purpose of the field trip.

-- **Openly Neutral** - The presentation and trip will focus on the missions as a vital part of California history, not as a point of departure for indoctrination in the Catholic faith.

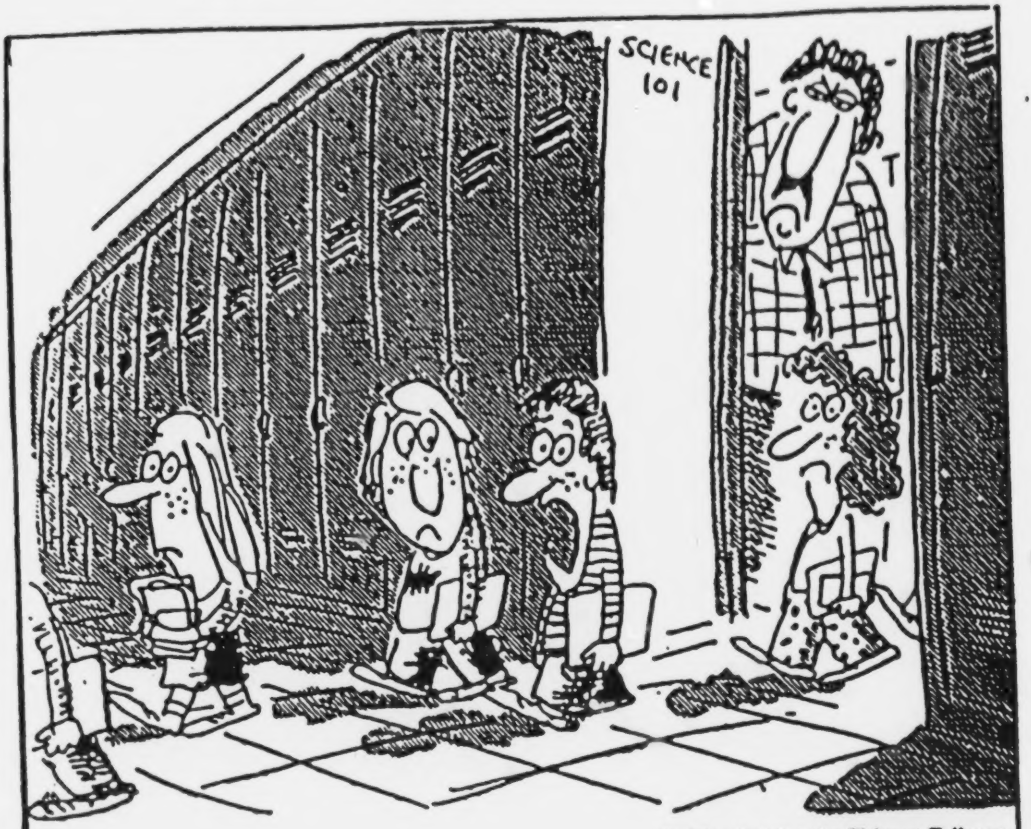
CASE 2 - This situation also passes the LEMON TEST.

-- **Lay Purpose** - The primary purpose of the activity is monetary, namely to raise money, not directly to support the Jewish faith.

-- **Easily Monitored** - With the presence of school administrators and faculty, there is assurance that there will be no religious involvement.

-- **Openly Neutral** - The students are not hurting or helping religion, but merely using a symbol of the Jewish faith. However, more obvious neutrality would be present if symbols of other religions were also used.

Cartoon - "Establishment" Clause



By Stayskal for the Chicago Tribune

"BOY, DID I GET INTO TROUBLE. I FELL ASLEEP AND HE THOUGHT I WAS PRAYING!"

Cartoon appeared in Skills Handbook on the Bill of Rights, edited by Michael Cusack, produced by Scholastic, Inc., 1991.

"Congress shall make no law respecting an establishment of religion ...." As applied to the local public school, this statement from the First Amendment of the Bill of Rights means that the atmosphere and activities in the public schools must not aid, sponsor, or encourage religion in general and/or particular religions.

THE "LEMON TEST" STATEMENT

The following segment from the Lemon v. Kurtzman Supreme Court case of 1971 lists the three-part "Lemon" test. (The words in parentheses are added to help you remember the meaning of each of the three parts.)

> "First, the statute must have a secular (lay) legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion (openly neutral). . .; finally, the statute must not foster an excessive government entanglement with religion" (easily monitored).

"Lemon Test" Explanation

In other words, the purpose of the situation must be non-religious. Secondly, the result of the situation or law must neither help nor hurt religion; the result must be neutral about religion. Finally, it must be easy to find out if the government-religion connection is proper.

"LEMON TEST" SCHOOL CASES

This activity gives us a chance to apply the "Lemon Test" to school situations in order to determine whether or not the involvement of religion is proper. Share orally with the other members of your Consulting Trio ideas and decisions according to the instructions contained in the chart below.

Cases	Student A	Student B	Student C
1 and 4	Finds evidence that religious involvement is proper	Finds evidence that religious involvement is improper	Makes final decision with reasons.
2 and 5	Finds evidence that religious involvement is improper	Makes final decision with reasons	Finds evidence that religious involvement is proper.
3 and 6	Makes final decision with reasons	Finds evidence that religious involvement is proper	Finds evidence that religious involvement is improper

Case 1: An exact copy of a paragraph containing ten verses from the King James Bible is used as the focus of a literature-based grammar lesson in English class.

Case 2: A test, officially prepared by, financed by, and approved by the Roman Catholic Archdiocese of Los Angeles, forms the basis of a review in Science class.

Case 3: The school principal hires a Lutheran minister to counsel students on Tuesday and Thursday afternoons from 4 to 5 p.m. at the park concerning general teenage problems.

Case 4: With the basketball team huddled around her, the coach, as part of the pre-game pep talk, suggests that the players say a silent prayer for their success.

Case 5: The principal organizes with St. Mark's Episcopal School the exchange of standardized music books for standardized industrial arts books.

Case 6: At the beginning of the assembly, during the "Pledge of Allegiance," all the students in the auditorium state the words "under

Name:____________________________________

THE "LEMON TEST" and ESTABLISHMENT CLAUSE Application

Directions: As a way for you to show your understanding of the "Lemon" test, please complete correctly the following questions concerning two school situations:

To pass the "Lemon" test, each of the following must be true:

A - The primary purpose of the situation must be lay or non- religious,
B - The proper role of religion must be easily monitored or checked, and
C - The religious aspect must be neutral or not favoring religion in general or any particular religion.

Case 1: As part of the fifth grade study of California history, students, along with their teachers, participate in a field trip to the San Gabriel Mission and listen to a presentation of its history by a Catholic priest.

Case 2: The Drama Club members, as a way to help its spring fund drive, circulate among the well-supervised students at lunch and distribute only unleavened bread, a symbol of the Jewish faith.

V - B. RELIGIOUS BELIEFS AND THE FLAG SALUTE

OVERVIEW of the lesson: The Free Exercise of Religion Clause of the First Amendment was written to ensure that government could not require people to engage in activities that forced them to violate their basic religious beliefs. In the 1940s, members of the Jehovah's Witnesses faith challenged the requirement that students must salute the flag in school classrooms. In this lesson students examine two decisions by the U.S. Supreme Court, one upholding the flag salute requirement and a second decision that reversed this ruling.

Students who complete this lesson successfully will recognize arguments that support and that refute the right of a state to require all students to pledge allegience to the flag

The **PURPOSE** of this lesson is to teach students that religious freedom is protected by the First Amendment. This freedom generally protects citizens from being required to participate in government sponsored activities that are contrary to their basic religious beliefs.

NECESSARY PREPARATION

1 - Determine how to divide the class into groups of four members each, as well as how to designate group members as A, B, C and D.
2 - Duplicate the **FLAG SALUTE CASES** and **THE BARNETTE CASE** handouts for each member of the class.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Place the following on the board or show on a transparency: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."	Read this section of the First Amendment.
2 - Have the students participate in the flag salute.	Participate in the flag salute.

TEACHER	STUDENTS
3 - Ask students to answer the following questions: What does the flag salute mean? What are reasons why someone may not want to participate in the flag salute ceremony?	Volunteer answers to the questions.

-- In response to the first question, write answers on the board that involve patriotism and national unity. For the second question, write those answers that concern religious freedom.

4 - Distribute the **FLAG SALUTE CASES** handout. Have students read the account of the Gobitis and Barnette cases.	Read the account about the Gobitis and Barnette cases.
5 - Divide the class into groups of four members each. Assign each member to be either A, B, C or D.	Become part of a group of four. Become either A, B, C or D.
6 - Instruct the A students in each group to give reasons why the position of the Board of Education was correct. The B students are to give reasons why the position of the Jehovah's Witnesses and the Barnette family was correct. Students designated as C are to give reasons why the position of the Board of Education was incorrect. The D students are to give reasons why the position of the Jehovah's Witnesses and the Barnette family was incorrect.	Students prepare assigned positions.
7 - Have students present their arguments to their "opposing partners." A to B and vice-versa; C to D and vice-versa.	Present arguments to "opposing partners."
8 - Distribute the **Barnette Case** handout. Ask each "A" partner to share his/her argument. Write the best responses on the board. Have students write this list under section A on on their handout.	"A" partners share their arguments. All copy the list from the board onto their handout under section A.

TEACHER	STUDENTS
9 - Repeat step #8 for the B, C and D partners.	Repeat step #8 for B, C and D.
10 - Ask students to decide which of these arguments might have been included in the Supreme Court's decision in Barnette. Write this decision on the handout.	Determine how the Supreme Court would decide and write it down.
11 - Ask selected students to share their decision. Then ask for a show of hands to count how many students decided for West Virginia and how many decided for the Barnettes.	Selected students share their decision. All tell how they voted.
12 - Share with the class the Supreme Court's actual decision.	Listen and ask questions for clarification.

-- The Supreme Court decided in favor of the Barnettes. It ruled that the state could not require students to salute the flag if it meant that they must violate their religious beliefs. In the words of Justice Robert H. Jackson "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or matters of opinion or force citizens to confess by word or act their faith therein."

CLOSING THE LESSON

Have students write answers to the following questions:

1 - What part of the Bill of Rights was involved in this lesson?
2 - What is the issue that we studied in this lesson?
3 - What is the relationship between the Gobitis decision and the decision in Barnette?

Answers such as the following indicate that students understand the major components included in this lesson:

1 - The Free Exercise of Religion Clause of the First Amendment,
2 - The issue concerned whether school children may be required to participate in the flag salute if doing so would violate their religious beliefs.
3 - The Barnette decision reversed (overturned) the Gobitis decision.

The FLAG SALUTE CASES

The Gobitis Case

In 1940, the Supreme Court ruled that children in school could be required to participate in the flag salute ceremony.

The decision involved the Gobitis family, members of the Jehovah's Witnesses religious faith, whose children had been expelled from school for refusing to salute the flag. To the Gobitis family, this was a religious issue; their faith did not permit them to worship a graven image--in this case the flag.

The Supreme Court ruled that the flag salute was needed to build national unity and security; they did not believe that the pledge violated the Free Exercise Clause of the First Amendment.

The Barnette Case

Following this ruling, the West Virginia Board of Education required all schools in the state to have a mandatory flag salute at all school activities. (This was at a time when World War II was already being fought in other parts of the world. The United States entered the war in December 1941.) A student who refused to salute the flag, would be suspended from school until she/he agreed to participate in the ceremony. In addition, the students were declared truant which could lead to their arrest and cause their parents to be fined or even sent to jail!

Walter Barnette, a Jehovah's Witness, sued the West Virginia Board of Education when his children were expelled for refusing to salute the flag, since they believed that this constituted worship of a graven image (idol).

The federal district court ruled in favor of Barnette and the Jehovah's Witnesses. This was different from the ruling in the Supreme Court's Gobitis case. So West Virginia appealed the case to the Supreme Court.

Who do you think won the case? Why?

The Barnette Case

A - List reasons why the West Virginia Board of Education was correct in their position.

B - List reasons why the Jehovah's Witnesses and the Barnette family were correct in their position.

C - List reasons why the West Virginia Board of Education was incorrect in their position.

D - List reasons why the Jehovah's Witnesses and the Barnette family were incorrect in their postion.

WHAT DO YOU THINK THE COURT DECIDED?

I think that the Supreme Court decision in the case of West Virginia Board of Education v. Barnette was that ______________________________

____

____.

I believe the U.S. Supreme Court decided this way because ____________

____

____

____

____.

V - C. FREEDOM OF SPEECH: WHAT ARE THE LIMITS?

OVERVIEW OF THE LESSON: Although the First Amendment says that "Congress shall make no law. . . abridging the freedom of speech. . .", the U.S. Supreme Court has never concluded that these words are to be applied literally. In this lesson students will learn about conditions when speech can be limited, by examining the guidelines that have been established in two major U. S. Supreme Court decisions. They will then use these guidelines to write a justification for their prediction regarding whether burning the U.S. flag as a form of political protest is a form of symbolic speech that is protected by the First Amendment.

The **PURPOSE** of this lesson is to teach students that there are limitations on the freedom that people have to say what they want, when they want, where they want. At the same time, it is important for them to realize that people do have constitutional protections, provided by the free speech clause of the First Amendment, to criticize public officials and others who support policies and actions that they believe are wrong or in need of change.

NECESSARY PREPARATION

1 - Select two students, or four if you prefer that they work in pairs, to prepare persuasive speeches that will be presented to the class.
2 - Duplicate copies of the **SUPREME COURT CASES** and **YOU BE THE JUDGE** handouts.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Write this section of the First Amendment on the board: "Congress shall make no law. . . abridging the freedom of speech . . ." Ask students to explain what they believe these words mean.	Explain the meaning of these words in the First Amendment.

You may wish to have students find the definition of "abridge" in the dictionary. The definition says: to shorten, to condense, to reduce or diminish, to cut short: curtail.

TEACHER	STUDENTS
2 - Ask for a response to questions such as: Do these words mean that Congress cannot make any laws that limit speech? Can people say whatever they want, whenever they want, wherever they want? What would happen if that were true?	Respond with examples of problems that would occur if no restrictions could be placed on free speech.
3 - Inform students that this lesson will help them to understand when limits may be placed on freedom to speak.	Listen
4 - Distribute the handout labeled: **TWO U.S. SUPREME COURT CASES**. Ask students read the excerpt from Schenck. Ask students to determine when, where, and why this guideline limits free speech.	Read the excerpt from Schenck v. U.S. Decide when, where, and why this guideline limits free speech.
5 - Ask volunteers to explain when, where, and why this guideline indicates that free speech could be limited.	Volunteers provide answers.

-- Justice Oliver Wendell Holmes, for a unanimous court, says that falsely shouting fire in a crowded theatre that would cause a panic can be prohibited because it would provide a "clear and present danger" that people would be injured or perhaps trapled to death for no justified reason. Remember that he said falsely shouting fire. There is no fire, so people would be alarmed unnecessarily.

6 - Have students read the excerpt from Chaplinsky v. New Hampshire. Ask students what kinds of speech may be limited as a result of this decision.	Read Chaplinsky and decide what kinds of speech may be limited and why.
7 - Ask selected students to explain what kinds of speech may be limited by this guideline and why.	Selected students explain their interpretation of what speech may be limited.

-- Justice Frank Murphy, for a unanimous court, says that if speech is (1) obscene, (2) slanderous (the spoken equivalent of libel), that is, it is intended to ruin the reputation of someone, or (3) obviously going to lead directly to a fight or violence, such speech is not protected by the First Amendment because its bad effects far outweigh any small good that could be gained from it.

---

8 - Provide a mini-lecture on symbolic speech:

The guidelines that we have just studied show that even some "pure speech" (just speech alone, without conduct) may be limited. But the more speech is combined with conduct, the less likely that it will be protected by the First Amendment. For example, restrictions can be placed on the time, place and manner that parades and other demonstrations may be conducted. People may be told that they cannot hold demonstrations at certain times, in certain places, or in a certain way; for example, demonstrators may be prohibited from using a loudspeaker that disturbs people in a hospital or a jail or a library, or be prohibited from marching near this kind of building.

On the other hand, there are certain important symbols that may be used by demonstrators as a means of "symbolic speech." The U.S. flag is such a symbol. People use the flag as a means of political protest because it is such an important symbol.

We are going to hear about a recent U.S. Supreme Court case that involves a man named Gregory Johnson, who participated in a march through the city of Dallas, Texas, during the 1984 Republican party national convention. The marchers were protesting the policies of President Reagan's administration. Gregory Johnson poured kerosene on an American flag and set it on fire. He was arrested and charged with violating a Texas law that made it illegal to desecrate (violate the sacredness of) the flag. We are going to hear arguments that (1) Johnson's action was a type of symbolic speech that should be protected by the First Amendment and (2) that flag burning is not a protected form of First Amendment expression. You (the class) will be the U.S. Supreme Court. After hearing the arguments you may ask questions about anything that is unclear concerning the positions presented in the speeches. Then you will write "your decision" as a Supreme Court Justice.

TEACHER	STUDENTS
9 - Have the students who prepared the speeches, make their presentations.	Listen, ask questions to clarify positions, if needed.

TEACHER	STUDENTS
10 - Distribute the **YOU BE THE JUDGE** handout. Have students write their decision and explain whether they would flag burning. Follow the instructions on on the handout.	Read the instructions. Write their decision and explain the reasons for their decision.
11 - Have students tell whether they found Gregory Johnson guilty or innocent. Then have them share their reasons for their decision.	Tell whether they found Johnson guilty or innocent. Also explain the reasons for their vote.

12 - Mini-lecture: Share the actual Court vote and decision with students.

The U.S. Supreme Court, in the case of Johnson v. Texas (1989), voted 5-4 that Gregory Johnson's action was a form of symbolic speech that was protected by the First Amendment. Justice William Brennan, writing for the Court majority, stated that "the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." He argued that Johnson's conduct did not result in a threat to disturbing the peace--his conduct did not constitute "fighting words"--so he could not be convicted for the content of his message.

Justice Anthony Kennedy was one of the five members of the majority. His concurring opinion illustrates that decisions are often difficult for Supreme Court Justices to make. He wrote, "The hard fact is that we must make decisions we do not like." Obviously, Justice Kennedy did not want to find Gregory Johnson innocent, but he believed that the free speech provision in the First Amendment required him to do so.

CLOSING THE LESSON

Have students write answers to the following questions:

1 - What was the main subject that we studied in this lesson?

2 - List the main guideline announced by the U.S. Supreme Court in either Schenck v. U.S. (1919) or in Chaplinsky v. New Hampshire (1942).

3 - Explain the issue that brought Gregory Johnson's case to the U.S. Supreme Court.

4 - Explain the decision of the Court and the reason provided by Justice Brennan to justify the decision in the Johnson case.

TWO U.S. SUPREME COURT CASES

Schenck v. United States. (1919)

In Schenck v. U.S. Justice Oliver Wendell Holmes included the following guidelines in his opinion: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. . . . The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

Chaplinsky v. New Hampshire (1942)

In this decision Justice Frank Murphy said: "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd, and obscene, the profane, the libelous, and the insulting or "fighting" words--those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."

YOU BE THE JUDGE

Texas v. Johnson (1989)

Instructions:

1 - State whether you believe that flag burning is protected by the First Amendment as a symbolic means of political protest is protected by the First Amendment.

2 - Support your opinion by using at least one of the guidelines established in Schenck v. U.S. or in Chaplinsky v. New Hampshire.

3 - Be objective. Leave your personal feelings out of the decision.

4 - Begin your opinion with the following sentence:

It is the opinion of this court that flag burning is ____________________

Role Playing Instructions

Role #1 = Your name is Gregory Johnson.

You participated in a political demonstration in Texas in which you burned the American flag to protest the policies of the Reagan administration.

Write a speech to present to the Supreme Court (your classmates) to justify your action as symbolic speech that is protected by the First Amendment. Include in your argument the principle that government may not prohibit you from expressing an idea just because most people feel that the idea is offensive to them. Also use at least one of the guidelines established in Schenck v. U.S. or Chaplinsky v. New Hampshire to support your position. Also use other reasons that you believe will strengthen your argument.

Role #2 = Your name is Tom Jacobson.

You are an attorney and a veteran of World War II.

Prepare a speech to give to the Supreme Court (your classmates) in which you argue that flag burning should not be protected by the First Amendment as a form of free expression. Include in your argument the idea that the flag has served as a symbol of freedom, liberty, and equality that has motivated leaders like Abraham Lincoln to preserve the union and free the slaves, and for Susan B. Anthony to fight for rights for women. Use at least one of the guidelines established in Schenck v. U.S. or Chaplinsky v. New Hampshire to support your position. Also use other reasons that you believe will strengthen your argument.

V - D. FREEDOM OF THE PRESS--Defining The Limits

OVERVIEW of the lesson: The Free Press guarantee in the First Amendment was not the subject of a U.S. Supreme Court case until the 20th Century. Although the provisions of the Alien and Sedition Act, passed in 1798 by the Federalist Congress, and signed into law by President John Adams provided punishment for anyone found guilty of merely criticizing the President or the Congress, the Act was not challenged in Court prior to its expiration in 1801. Since the Congress did not attempt to place strict limits on the press during the 19th Century, it was not until Congress passed the Sedition Act of 1917 that the U.S. Supreme Court began to examine the importance of First Amendment Free Press protections. When the Free Press provision was incorporated in 1931, additional challenges to state restrictions on the press were raised.

Students who complete this lesson will learn, by analyzing summaries of six U.S. Supreme Court decisions, what protections have been extended to the press from 1919 to 1990. Students will also be able to identify the significant functions performed by a free press in a democratic society, as well as recognize the times when restrictions may be placed on the press.

The **PURPOSE** of this lesson is to teach students the historical development of a Free Press in America as well as the importance of freedom of the press in a democratic society. Students will also learn that there are times and circumstances when the First Amendment permits restrictions on the press and other media in order to protect national security or to prohibit the use of profane or obscene language. The lesson also teaches students how to analyze the components of a Supreme Court decision.

NECESSARY PREPARATION

1 - Plan to divide the class into groups of four members each, as well as how to designate members of each group as A, B, C and D.

2 - Duplicate the **FREEDOM OF THE PRESS-SUMMARY** handout for each member of the class.

3 - Duplicate enough copies of the six case summaries so that each member of a group has a copy of the case to be analyzed by that group.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Write the following words on the board (or have students look at a copy in their textbook or on an overhead projector). Congress shall make no law. . .abridging the freedom. . .of the press.	Note the provisions of the First Amendment.
2 - Ask students to identify "the press."	Identify the press with newspapers, magazines, pamphlets, as well as the electronic media.
3 - Ask: Why is freedom of the press important?	Respond with: to gain knowledge, share information, keep officials honest, unite people to action, express ideas, even provide humor
4 - The First Amendment says: NO law. Can you think of a situation when freedom of the press should be limited?	Recognize this might occur during wartime and national emergencies.
5 - Ask: Who decides whether these restrictions on the press may be permitted?	Volunteers identify the courts, and ultimately the U.S. Supreme Court as the decision maker.

-- Inform the students that in this lesson they will learn how to examine U.S. Supreme Court decisions that interpret the protection provided to the press by the First Amendment.

6 - Divide the class into groups of 4 each. Designate each member as A, B, C or D.	Become a member of a group of 4 and be either A, B, C or D.

TEACHER	STUDENTS
7 - Distribute SUPREME COURT CASE handouts 1-6 (one case per group; individual copies for each member). The class size will determine how many of the cases will need to be distributed to more than one group. Have students note the 4 questions at the bottom of each case. Inform them that they will be responsible for answering the question that corresponds with their letter.	Obtain a copy of the case assigned to your group. Identify the question each is to answer: A answers A, B answers B, etc.

-- If the alternative **CLOSING THE LESSON** activity is used, then only the first five cases will be used in this section of the lesson. The sixth case is then used by all class members as the final component of the lesson.

TEACHER	STUDENTS
8 - Have students read the case and answer their assigned question.	Read the case and answer the assigned question.
9 - Have students discuss their answers with other members of their group. Other group members are to assist when they believe that an answer is incorrect or incomplete.	Share answers with group members. Change answers if other group members convince you that a mistake has been made.
10 - Place the FREEDOM OF THE PRESS-SUMMARY chart on the board or overhead.	Observe.
11 - Ask representatives from case 1 to share their answers. Write a summary on the board or overhead.	Representatives from case 1 A, B, C and D share their answers.

-- A variation on the case chart is to have each group make an individual chart for their case using the 5 column format of the Freedom of the Press - Summary. Place each group's chart around the room for future reference. Another option is to have one big chart and have each group fill out a horizontal strip with the information (5 columns) on separate cards for each of the 5 columns and paste on the big chart as the information is shared.

TEACHER	STUDENTS
12 - Repeat #11 with representatives of cases 2-6 (or 2 to 5 if the alternative closing is used.)	Repeat #11 with representatives for cases 2-6 (or 2 -5).
13 - Distribute FREEDOM OF THE PRESS - SUMMARY chart and have each student fill in each section.	Fill in the information in chart for each case.
14 - Ask students what conclusions they can come to regarding the Supreme Court's expanding or limiting freedom of the press through their decisions.	Use information from the cases studied to support or refute the statement.

-- Students should conclude that Supreme Court decisions have both expanded and limited freedom of the press.

CLOSING THE LESSON

Have students write answers to the following questions:

1 - What is the most important benefit of a free press in a democratic society? Why?
2 - From cases studied in this lesson, what examples can you provide that involve situations when the press may be restricted? When can't the press be restricted?
3 - How does this lesson on freedom of the press show that the Bill of Rights is a living document?

Answers such as the following will indicate that students have a satisfactory knowledge of the important components of this lesson.

1 - One of the components discussed in Step 3 of the lesson, such as the expression of ideas, keeping officials honest, sharing information, gaining knowledge, or uniting people to action would be acceptable answers.

2 - Refer to the SUMMARY SHEET. Cases 1, 5 and 6 limited the press; cases 2, 3 and 4 expanded the ability of the press to publish.

3 - New circumstances continually require the U. S. Supreme Court to determine what protections the Free Press Clause of the First Amendment provides for the press.

CLOSING THE LESSON - An Alternative

Instead of using all 6 cases in the main part of the lesson, use the last case (Milkovich v. Lorain Journal) as a full-class project.

TEACHER	STUDENTS
1 - Distribute copies of the case to all students.	Obtain a copy of the case.
2 - Ask students to read the case and write answers to the four sections on the SUMMARY SHEET.	Students read and write answers on the SUMMARY SHEET.
3 - Ask students to share their responses or hand in for grading.	Share responses or hand in for grading.
4 - Have students add the information about this case to the SUMMARY CHART.	Add the information to the SUMMARY CHART.

An additional follow-up suggestion:

Take each square of information for the chart created by the class (6 cases X 5 columns = 30 squares), type on a page in squares (game pieces) and duplicate for each group *or* each student. Cut the pieces apart. Also, prepare for each group or student a bingo card-like page. Play a bingo-type game or have each group/student complete the puzzle independently by placing each piece in the proper square.

FREEDOM OF THE PRESS - SUMMARY

CASE Name/Year	FACTS Who did What?	ISSUE What question did the Court consider?	DECISION Who Won? Why?	EFFECT Did the decision expand press freedom? How?
Gitlow v. New York (1925)				
Near v. Minnesota (1931)				
N Y Times v. Sullivan (1964)				
N Y Times v. U. S. (1971)				
F C C v. Pacifica (1978)				
Milkovich v. Lorain Journal (1990)				

SUPREME COURT CASE #1

Gitlow v. New York (1925)

Benjamin Gitlow, a member of a left-wing section of the Socialist Party, published "The Left-Wing Manifesto" which supported revolutionary mass action to overthrow the government by force, violence, and other unlawful means. He was convicted of violating the New York Criminal Anarchy Act of 1902 and sent to prison. Prior to the Gitlow decision, the U.S. Supreme Court had ruled that citizens could not claim that freedoms listed in the First Amendment protected them from actions by their state governments.

In a 7 to 2 decision delivered by Justice Edward Sanford the Supreme Court, said:

. . .[Even though] freedom of speech and of the press. . . are protected by the First Amendment from. . . impairment by the states, . . . [a state] may punish those who abuse this freedom. . . . [A state] may punish utterances endangering the foundation of organized government and threatening its overthrow by unlawful means. Freedom of speech and press . . . do not protect disturbances to the public peace or the attempt to subvert the government. . . . [The defendant does not have to suggest] some definite or immediate act or acts of force, violence or unlawfulness. It was sufficient if such acts were advocated in general terms; it was not essential that their immediate execution should have been advocated.

A. What are the facts? Who did what?

B. What is the question (issue) that the U.S. Supreme Court is asked to decide?

C. What was the decision of the Court? Who won? What was the reason for the decision?

D. What was the effect of the decision on freedom of the press? Did the decision expand or limit freedom of the press? Explain.

SUPREME COURT CASE #2

Near v. Minnesota (1931)

Jay Near, publisher of a Minnesota newspaper, attacked Jews, blacks, Catholics and unions in his newspaper articles. He also accused several Minneapolis public officials of corruption and having ties with local mobsters. One of the named officials went to a judge who ordered Near to stop printing his newspaper. The judge used a 1925 state law that said that any paper publishing "malicious, scandalous and defamatory" matter was a public nuisance and a court could ban future issues. Near complained to the Minnesota state courts, but they upheld the law. Near then appealed to the U.S. Supreme Court, who agreed to hear his case.

In a 5 to 4 decision, Chief Justice Charles Evans Hughes said for the majority:

> The fact that the liberty of the press may be abused. . . does not make any the less necessary the [protection] of the press from prior restraint. . . . For whatever wrong the [author] had committed or may commit by his publications, the state affords both public and private redress by its libel laws. . . . [T]he protection even as to previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases. 'When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight.'. . . On similar grounds, the primary requirements of decency may be enforced against obscene publications. . . . [But] these limitations are not applicable here.

A. What are the facts? Who did what?

B. What is the question (issue) that the U.S. Supreme Court is asked to decide?

C. What was the decision of the Court? Who won? What was the reason for the decision?

D. What was the effect of the decision on freedom of the press? Did the decision expand or limit freedom of the press? Explain.

SUPREME COURT CASE *3

New York Times v. Sullivan (1964)

L. B. Sullivan, an elected official from Montgomery, Alabama, brought a libel suit (a claim of injury to his reputation) against the New York Times for publishing an advertisement from a civil rights group that accused Alabama government officials of committing racist actions. The advertisement contained some factual errors. For example, it stated that police had ringed Alabama State College when in fact they were merely present near the college. Sullivan claimed he had been libeled, the trial court agreed and Sullivan was awarded $500,000 in damages. The newspaper appealed and the case reached the Supreme Court.

In a unanimous decision Justice William Brennan wrote for the Supreme Court:

Debate on public issues should be uninhibited, robust, and wide-open. . . [It] may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. . . . [E]rroneous statements are inevitable in free debate, and [they] must be protected if the freedoms of expression are to have the breathing space they need. . .to survive. [Public officials can recover damages only if they] prove that the statement was made with actual malice--that is, with knowledge that it was false, or with reckless disregard of whether it was false or not. . . . We think the evidence against the Times supports at most a finding of negligence in failing to discover the misstatements, and is constitution- ally insufficient to show the recklessness that is required for a finding of actual malice.

A. What are the facts? Who did what?

B. What is the question (issue) that the U.S. Supreme Court is asked to decide?

C. What was the decision of the Court? Who won? What was the reason for the decision?

D. What was the effect of the decision on freedom of the press? Did the decision expand or limit freedom of the press? Explain.

SUPREME COURT CASE *4

New York Times v. United States (1971)

The New York Times and other newspapers printed selections from a secret government report that was critical of American policies during the Vietnam War. A former Pentagon (Department of Defense) official had given the newspapers this report, which became known as the "Pentagon Papers." President Richard Nixon sought a court order to stop publication (a prior restraint) claiming that national security and the safety of troops in Vietnam might be endangered.

In a 6 to 3 decision the Supreme Court said:

"Any system of prior restraint of expression comes to this Court bearing a heavy presumption against its constitutional validity." . . . The government "thus carries a heavy burden of showing justification for the imposition of such a restraint." . . . The District Court for the Southern District of New York . . . held that the Government had not met that burden. We agree.

A. What are the facts? Who did what?

B. What is the question (issue) that the U.S. Supreme Court is asked to decide?

C. What was the decision of the Court? Who won? What was the reason for the decision?

D. What was the effect of the decision on freedom of the press? Did the decision expand or limit freedom of the press? Explain.

SUPREME COURT CASE *5

Federal Communications Commission v. Pacifica Foundation (1978)

In 1974, a New York City public radio station, licensed to the Pacifica Foundation, Inc., broadcast a discussion of modern attitudes toward language. The radio station played portions of a comedian's routine that contained seven "Filthy Words." A listener, who was driving in his car with his young son, heard part of the broadcast. He filed a compaint with the Federal Communications Commission (FCC). The FCC issued a formal letter of criticism. Pacifica Foundation objected and the United States Court of Appeals said that a rule against objectionable words was unconstitutional. The FCC appealed to the Supreme Court.

In a 5 to 4 decision, delivered by Justice John Paul Stevens, the Supreme Court said:

Vulgar. . .offensive. . .and shocking [language] is not entitled to absolute Constitutional protection under all circumstances. A plurality (less than five) of the Justices said that [F]irst Amendment protection might be required if the monologue had a political content or was intended to be a satire. But that is simply not this case, these Justices concluded. They also said that [Broadcasting]. . .can intrude on the privacy of the home without prior warning as to program content and is uniquely accessible to children, even those too young to read.

A. What are the facts? Who did what?

B. What is the question (issue) that the U.S. Supreme Court is asked to decide?

C. What was the decision of the Court? Who won? What was the reason for the decision?

D. What was the effect of the decision on freedom of the press? Did the decision expand or limit freedom of the press? Explain.

SUPREME COURT CASE #6

Milkovich v. Lorain Journal (1990)

The crowd attending a high school wrestling meet in Lorain, Ohio got out of control. A sports writer for the Lorain Journal wrote an article claiming that one of the coaches, Michael Milkovich, had ranted and raved and egged on the crowd. The coach was then called before a high school sports governing body which put him on probation. Milkovich went to court and the probation was overturned. The newspaperman then wrote an article claiming that, in his opinion, Milkovich had lied in court. Milkovich sued the newspaper for libel (trying to ruin his reputation). Eventually, the case reached the Supreme Court.

In a 7 to 2 decision, the Supreme Court said:

First Amendment protection does not create a wholesale defamation exemption for anything that might be labeled opinion. . .especially when readers or listeners might reasonably assume that what was being said is a statement of fact. Persons may win a state libel case if they can prove that the statement is false. The statement is not protected just because the author prefaces it with "in my opinion."

A. What are the facts? Who did what?

B. What is the question (issue) that the U.S. Supreme Court is asked to decide?

C. What was the decision of the Court? Who won? What was the reason for the decision?

D. What was the effect of the decision on freedom of the press? Did the decision expand or limit freedom of the press? Explain.

FREEDOM OF THE PRESS - SUMMARY

(Teachers' Guide)

CASE Name/Year	FACTS Who did What?	ISSUE What question did the Court consider?	DECISION Who Won? Why?	EFFECT Did the decision expand press freedom? How?
Gitlow v. New York (1925)	Gitlow, encouraged overthrow of government gov't by force and violence.	Was Gitlow's First Amendment right violated?	New York. Advocacy is all that is needed.	Yes and No. First Amendment limits states, but Gitlow guilty.
Near v. Minnesota (1931)	Near was not allowed to publish his newspaper.	Was prior restraint a violation of the First Amendment?	Near. Prior restraint is usually illegal.	Yes. Difficult for the gov't to stop publishing in advance.
N Y Times v. Sullivan (1964)	Sullivan claimed he had been libeled by the article in the Times.	Did the article libel Sullivan?	The Times. Sullivan did not prove actual malice.	Yes. Expands right to criticize public officials.
N Y Times v. U. S. (1971)	Nixon wanted to stop publication of the Pentagon Papers.	Could newspapers be prevented from publishing the Pentagon Papers?	The Times. There was insufficient reason given to stop.	Yes. Expands right to publish, if no emergency exists.
F C C v. Pacifica (1978)	A father wanted the radio station punished for using the "Filthy Words."	Could the station be punished for using the "Filthy Words?"	The father. Words were offensive, children heard them.	No. Limits use of "Filthy Words" in radio broadcasts
Milkovich v. Lorain Journal (1990)	Milkovich sued the newspaper for libel when he was called a lier.	Was the reporter guilty of libel?	Milkovich. Can't avoid a libel suit by stating: "In my opinion the fact is..."	No. Limits use of "In my opinion" to avoid a libel suit.

V - E. FREEDOM OF THE PRESS -- An Application

OVERVIEW of the lesson: This lesson may be used following lesson V - D, or as a stand-alone Free Press application. Initially students are presented with a challenge to determine which of five types of publications are protected by the First Amendment. Students, divided into groups, will place these activities on a continuum from that which is most likely to be protected by the First Amendment to the publication that the government would most likely be able to suppress. Then students read guidelines established by two seminal U.S. Supreme Court decisions. Finally, armed with this new information, they decide whether their initial assessments need to be revised.

The **PURPOSE** of this lesson is to teach students about circumstances when the First Amendment permits the government to place limitations on what the press may publish.

NECESSARY PREPARATION

1 - Determine how to divide the class members into groups of 4-6 members each.
2 - Place the format for recording student group rankings on the board.
3 - Duplicate copies of the **FREE PRESS ISSUES** handout for each member of the class.
4 - Duplicate copies of the **FREEDOM OF THE PRESS DECISION GUIDELINES** handout for each member of the class.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Ask students to recall what the First Amendment says about the subject of a free press.	Recall the provision: "Congress shall make no law. . . abridging the freedom of. . . the press."
2 - Ask students whether those words mean that Congress is always prohibited from limiting what is printed or published.	Students may respond that there may be times when the content of publications may be prohibited.
3 - Inform students that in this lesson they will be asked to decide what information can be published and what cannot be published.	Listen.

TEACHER	STUDENTS
4 - Divide the class into groups of 4-6 each. Distribute the FREE PRESS ISSUES handout. Ask students, working in groups, to order the activities on a continuum from 1 to 5 as instructed on the handout.	Become a member of a group. Help the group to decide how to order the activities on a continuum from 1 to 5.
5 - Ask a representative from each group to write their ranking on a chart placed on the board. (Do not provide a "correct" ranking at this time.) A suggested format:	A representative from each group writes their ranking on the board.

RANKING FOR GROUP 1	RANKING FOR GROUP 2	RANKING FOR GROUP 3	RANKING FOR GROUP 4	FREE PRESS ISSUE
				Criticizing a public official
				Publishing false information
				Publishing after a conviction
				Writing about baseball game
				Publishing military secrets

6 - Ask each group to decide which of these 5 activities the government could prohibit.	Group decides which activities could be prohibited.
7 - Ask selected representatives from each group to report its decision, as well as the reason(s) for the decision. (Do not provide a "correct" answer at this point. Inform students that they will have an opportunity to change their ranking before the lesson is finished.)	Selected representatives report their decision and the reason(s) for the decision.

TEACHER	STUDENTS
8 - Distribute FREEDOM OF THE PRESS DECISION GUIDELINES handout. Ask students to read the guidelines and decide whether they should change any answers given in Numbers 5 and 6 above.	Read the GUIDELINES. Decide whether to change the rankings made in Numbers 5 and 6 above.
9 - Ask groups what changes they made and explain why these changes were needed.	Tell what changes they made and explain why the changes were needed.
10 - Provide the "correct" ranking, as determined by the U.S. Supreme Court. The order should be 2, 4, 3, 1, 5.	

-- As needed, provide the following mini-lecture:

In Near v. Minnesota we see that the principle of PRIOR RESTRAINT would not allow the government to stop a publication because of a previous conviction. This is the middle (Number 3) item on the continuum. Obviously the government could not prohibit the report of the baseball game (Number 1), or the criticism of a public official (Number 2)--as the guideline in New York Times v. Sullivan indicates.

It is more difficult to determine whether the government could prohibit the other two types of publications. Although someone who knowingly publishes false information that is intended to damage a person's reputation could be found guilty of "libel", if clear evidence of this fact is available, the government would not be able to prohibit the publication in advance (Number 4). The government would, however, be able to stop publication of military information during wartime if they could provide adequate evidence to a judge that soldiers' lives would be endangered if the information were published (Number 5).

CLOSING THE LESSON

1 - Have each group of students construct an anagram that describes an important point learned in this lesson. Limit the anagram to fewer than 20 words. The group will submit the solution to you.

2 - Have a representative from each group write their scrambled anagram on the board.

3 - The other groups are to solve the anagrams. The first group to solve correctly (in writing) three anagrams could be provided with an appropriate award. Alternatively, the group able to construct an

FREE PRESS ISSUES

Rank the following activities from 1 to 5, with "1" being the activity that requires the least amount of freedom (the press would be permitted to do this nearly everywhere in the United States) to "5" being the activity that requires the most freedom (the press would be permitted to publish this only in those places where a great deal of freedom is allowed).

_____ A newspaper publishes information that criticizes a public official because the editor disagrees with his vote on a public policy issue.

_____ A magazine publishes information that they know is false about a person in an effort to damage this person's reputation.

_____ A newspaper is allowed to publish an article about a particular subject even after it has been convicted of knowingly publishing false information about the subject at an earlier time.

_____ A newspaper publishes accurate information about a baseball game.

_____ A magazine publishes a list of military secrets during wartime that will place the lives of American soldiers in danger.

FREEDOM OF THE PRESS DECISION GUIDELINES

In Near v. Minnesota (1931) a five member majority of the U.S. Supreme Court decided that a law that was a PRIOR RESTRAINT on the press was unconstitutional. Prior restraint, or prior censorship, refers to stopping the publication of something before a court decides that the material to be published violates the law. The Justices did say, however, that there may be some instances when the government may be justified in asking for a PRIOR RESTRAINT, for example, during wartime.

The decision in New York Times v. Sullivan (1964) stated that criticism of public officials is protected by the First Amendment unless it involves ACTUAL MALICE. Actual malice exists when someone publishes information that is intended to ruin the reputation of another person, and they know what they published is false, or they have not investigated carefully to find out if the statements are true or false.

CHAPTER VI

RIGHTS OF PERSONS ACCUSED OF CRIME -Procedural Amendments

OVERVIEW - SUBSTANCE AND SEQUENCE

The provisions of four amendments in the Bill of Rights are specifically designed to protect citizens against the arbitrary use of governmental power. The specific guarantees in these amendments require the government to follow procedural guidelines before, during, and after a citizen is accused of, tried for, and convicted of a criminal offense.

The lessons in this Chapter involve several important procedural guarantees found in the Fourth, Fifth and Sixth Amendments. Lesson VI - A. concerns the exclusionary rule, created by judicial interpretation and application of the search and seizure clause of the Fourth Amendment. When this rule is violated, evidence that is obtained by law enforcement officials may not be used in court. A role play is used to illustrate when the exclusionary rule may be invoked, and how it is applied both in the public school context and in a typical societal context.

Citizen protections guaranteed by the due process clause of the Fifth Amendment are the subject of Lesson VI - B. Its components demonstrate the significant limitations on individual freedom that may result when governmental officials are not required to abide by these procedural guarantees. The final lesson in the Chapter uses the Japanese internment experience during World War II to illustrate how, during a time of national emergency, various guarantees listed in the Sixth Amendment were denied to persons who were evacuated from the West Coast.

LESSONS IN THIS CHAPTER

VI - A. THE FOURTH AMENDMENT, THE EXCLUSIONARY RULE, AND THE SCHOOLS

VI - B. THE FIFTH AMENDMENT AND DUE PROCESS OF LAW

VI - C. THE JAPANESE INTERNMENT AND THE SIXTH AMENDMENT

VI - A. THE FOURTH AMENDMENT, THE EXCLUSIONARY RULE, AND THE SCHOOLS

OVERVIEW of the lesson: This lesson concerns one of the most controversial guarantees included in the Bill of Rights. The exclusionary rule is a judge-made rule that is a product of the search and seizure provision in the Fourth Amendment. The lesson is introduced by a role-playing simulation. Next, students read the Fourth Amendment and learn about the origin of the exclusionary rule as well as how the U.S. Supreme Court has applied the rule in the context of persons accused of crimes. Finally, they analyze the 1985 U.S. Supreme Court decision in New Jersey v. T.L.O. that modified exclusionary rule guidelines when applying them to searches and seizures in a public school.

Students who complete this lesson successfully will understand the U.S. Supreme Court's interpretation and application of the "probable cause," "unreasonable searches and seizures," and the "Warrant" clauses of the Fourth Amendment.

The **PURPOSE** of this lesson is to teach students about (A) the liberties that are guaranteed to citizens by the Fourth Amendment Exclusionary Rule and (B) how the exclusionary rule is applied in the public school context.

NECESSARY PREPARATION

1 - Choose a student to take part in a ROLE PLAY.

2 - Contact the principal and the student's parent(s) to receive permission to participate. (This will avoid any misunderstanding.)

3 - Prepare the student to participate in the ROLE PLAY that will serve as an introduction to the lesson. Provide the student with the material to be confiscated (this could be a cover that you attach to a magazine to make it appear to be pornographic material). Practice the sequence in Step 1 of the instructions. Try to make the ROLE PLAY appear to be spontaneous. Conduct the search in a way that would seem to be "illegal"--without probable cause or reason to believe that the student had something illegal in the backpack.

4 -Duplicate copies of **THE FOURTH AMENDMENT IN THE SCHOOLS** and the **SEARCHING LOCKERS** handouts.

4 - Locate the Fourth Amendment in the student text or prepare to show it on an overhead projector.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Conduct the ROLE PLAY with the student. (A) Demand that the student empty his/her backpack. (B) The student initially refuses but eventually agrees. (C) Upon emptying the backpack, the "pornographic" magazine is found. (D) Confiscate the magazine and prepare to send the student to the principal. (E) The student objects to the search and says: "That's against my Fourth Amendment constitutional rights." (F) Respond that the Constitution does not provide protection, but then turn to the class and ask for their opinion.	Observe the ROLE PLAY. (Hopefully, it will be viewed as a spontaneous event.)
3 - Write the words "Exclusionary Rule" on the board. Ask students if they can find this term in the Fourth Amendment. Define the term as: evidence that is obtained illegally must be excluded from a court trial.	Try to find the term in the Fourth Amendment.
4 - Ask for key words that are included in the Amendment.	Respond with: Unreasonable searches, probable cause, warrant.

-- When students are unable to find the term in the Amendment, give a Mini-lecture:

When the police conduct a search, if the evidence is to be admissible in court, the search must be justified by the belief that the person searched had something illegal; that is, they must have "probable cause" to believe the person is hiding evidence of a crime. If they have "probable cause," the police must get a search warrant prior to searching--unless there is a strong liklihood that someone will be in danger if they do not take action immediately.

TEACHER	STUDENTS
5 - Ask: If I were a police officer and the search occured on the street, would the search be legal?	Respond "NO". Probable cause and a search warrant were lacking.
6 - Distribute the FOURTH AMENDMENT IN THE SCHOOLS handout. Ask students to determine whether there is a different protection provided by the Fourth Amendment within the school than applies to the police on the streets.	Read the case and determine whether the Fourth Amendment applies the same in the public school context.
7 - Ask: How do Fourth Amendment provisions apply differently in the schools?	Respond with: A search warrant is not needed by school officials; instead of probable cause, the guideline is "reasonable grounds" that the search will provide evidence that the student has violated school rules or some law. But, the Fourth does apply and searches must be reasonable.
8 - Ask whether the search conducted at the beginning of the lesson was "reasonable." What would determine whether it was "reasonable?"	Volunteer responses that relate to Number 7 above.
9 - Ask: What do you believe is the purpose of the Fourth Amendment?	Respond: A - Fairness to the accused. B - Provide a deterrant to the police and misconduct by school officials.

CLOSING THE LESSON

TEACHER	STUDENTS
1 - Divide the class into groups of four. Designate each student as A, B, C, or D.	Become either "A", "B", "C", or "D".
2 - Distribute the SEARCHING LOCKERS handout. Ask students to read the selection.	Read the selection.
3 - Inform students that those designated as "D" will be responsible for assisting the others to write answers to their assigned questions. Student "A" will answer "A", "B" will answer "B", and "C" will answer question "C."	Student "D" assists the others to write answers to their questions.
4 - Ask selected students to share their answers.	Selected students share answers.

Responses such as the following will indicate that students understand the main points included in the lesson:

A - A major question concerns whether the search was reasonable, under the circumstances. In this instance the search for books was reasonable because there were reasonable grounds to believe that searching the locker would provide evidence that Sally violated the law or school rules. The search involved a place and not Sally's person. This also makes it more likely the search is permissible.

B - A policeman would likely need "probable cause" and a "warrant" in order to search Sally's backpack unless he obtained her consent.

C - If the initial search by the principal was based upon reasonable grounds, due to the fact that school authorities have a legitimate need to maintain an environnment in which learning can take place, it is likely the evidence obtained from the search could be used against Sally.

THE FOURTH AMENDMENT IN THE SCHOOLS

The case of New Jersey v. T.L.O. (1985)

T.L.O. was a ninth grade student who was caught smoking in a bathroom, which was a violation of a school rule. She was taken to the vice principal's office where she denied that she had been smoking and claimed that she did not smoke at all. The vice principal demanded to see her purse. Upon opening it he found a pack of cigarettes. Then he also noticed a package of cigarette rolling papers that are commonly used in making marijuana cigarettes. His more thorough search of the purse revealed some marijuana, empty plastic bags, a pipe, a number of one-dollar bills, a list of students who appeared to owe T.L.O. money, and two letters that indicated T.L.O. was selling marijuana.

The vice principal turned the evidence over to the police. Delinquency proceedings were brought against her in juvenile court. T.L.O.'s lawyer asked that the evidence be excluded, claiming that it was obtained in violation of the search and seizure clause of the Fourth Amendment. A New Jersey trial court ruled that the search was reasonable, but on appeal the New Jersey Supreme Court ruled in favor of T.L.O., saying the search of her purse was unreasonable since it was not related to the accusation of smoking in the bathroom.

The U.S. Supreme Court agreed to hear the case. What follows is an analysis of the U.S. Supreme Court decision.

Issues: (1) Does the Fourth Amendment provision concerning unreasonable searches and seizures apply to searches by public school officials?
(2) If so, was the Fourth Amendment violated in this case?

Decision: (1) Yes, it does apply.
(2) No, there is no violation of the Fourth Amendment.

Reasons: (1) All nine members of the U.S. Supreme Court agreed that the Fourth Amendment's restriction on unreasonable searches and seizures does apply to searches conducted by public school officials.

(2) A majority of the justices held that school authorities do not need to obtain a warrant before searching students to determine if they have violated the law or school rules. The standard for the level of suspicion needed to justify a search is also lower. Probable cause is not needed. Instead, the reasonableness of the search given the specific circumstances will determine if the search is legal. It will be legal if there is a reasonable basis for suspecting that the search will produce evidence that the student has violated the law or school rules.

In addition, the scope of the search must be reasonably related to the objective of the search and not intrude excessively when considering the age and sex of the student and the kind of violation that is involved.

In this case, the vice principal had a reasonable suspicion that T.L.O. possessed cigarettes. This justified opening the purse to search for cigarettes. Observing the package of rolling papers as he removed the pack of cigarettes provided a reasonable suspicion that marijuana might be present. This justified further exploration of the contents of her purse. Therefore, no violation of the Fourth Amendment occurred.

SEARCHING LOCKERS

The school librarian sent a notice to all teachers informing them that five books were missing from the library. Each contained information about the same subject--history of the state of California.

Sally, one of the students in the American history class has submitted an excellent research paper on this subject. Her teacher informed the librarian about this fact. In addition, one of the other students, when questioned by the librarian, said that he saw Sally using several California history books in the study hall.

The librarian informed the principal about these facts. The principal called Sally into his office. She acted very nervous and denied having the books, but she would not give the principal permission to search her locker. "I have a right to privacy", she said. Because the principal did not believe Sally, he opened her locker. He did not find the books, but he did discover a loaded gun and some notes that had been sent to Sally by members of a local gang, in which they threatened to harm her if she refused to help them write a term paper.

QUESTIONS:

A - Did the principal have the right to open Sally's locker without her permission? Why? Why not?

B - If Sally were walking home from school, could a policeman search her backpack for the missing books without her permission? Why? Why not?

C - Could the gun be admitted into evidence against Sally, or would it be inadmissible under the "exclusionary rule?" Explain.

VI - B. THE FIFTH AMENDMENT AND DUE PROCESS OF LAW

OVERVIEW of the lesson: The Fifth Amendment and two clauses of Article I, Section 9 of the Constitution provide the context for this lesson. A pretest introduces the concepts that will be studied in the lesson and a PLAY is used to illustrate aspects of government activity that constitute violations of these due process of law components. While watching (or reading) the PLAY for a second time, students will identify activities that constitute violations of due process guarantees.

Students who complete this lesson successfully will understand several important guarantees of due process that serve as protections citizens enjoy against arbitrary governmental action.

The **PURPOSE** of this lesson is to teach students that several provisions in the Fifth Amendment and in Article I, Section 9, Clauses 2 and 3 of the Constitution are designed to ensure that the power of government is used in a manner that follows regular procedures that are known in advance.

NECESSARY PREPARATION

1 - Duplicate copies of the **UNLIMITED GOVERNMENT PRETEST**, the **DUE PROCESS OF LAW** handout, and the **DUE PROCESS OF LAW WORKSHEET**.

2 - Determine whether to have selected students prepare the **PLAY** to be performed for the class or whether you want the students to read the play in class. If students are to perform, you may choose to video tape the play rather than have a live performance.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Distribute the LIMITED GOVERNMENT pretest. Ask students to complete the exercise. Also ask them to think of meanings for the terms.	Complete the worksheet. Think about meanings for the terms.
2 - Discuss the terms. Ask students to give examples (but do not provide answers at this point in the lesson).	Volunteer answers to the questions. Provide examples of the terms.

-- Correct answers are: 1=F, 2=E, 3=A, 4=G, 5=C, 6=D, 7=B, 8=H

TEACHER	STUDENTS
3 - Distribute the DUE PROCESS OF LAW handout (or have students read Article I, Section 9, Clauses 2 and 3, plus Amendment V in the text).	Read the section from the Constitution included on the handout.
4 - Have students perform the UNLIMITED PLAY, if selected students have prepared it in advance; or have the students read the play together. (Another option is to video tape the PLAY and show it to the class.) Ask students to watch for violations of the constitutional provisions they read about in the handout.	Watch the PLAY or read the PLAY together as instructed. Watch for violations of Due Process of Law.
5 - After viewing the play, have students share their observations. (Do not provide correct answers at this time.)	Share observations about violations they saw.

CLOSING THE LESSON

TEACHER	STUDENTS
1 - Distribute the DUE PROCESS OF LAW WORKSHEET. Have students read the instructions and explain that they are to look for violations of DUE PROCESS OF LAW as they watch (or read) the PLAY again.	Study the instructions on the WORKSHEET.
2 - Have the PLAY repeated (or reread, if the PLAY is not performed by students). As it is repeated (or reread) students should identify four (4) actions that describe violations of Due Process of Law. These actions should be written on the WORKSHEET.	Identify four (4) actions that describe violations of Due Process of Law. Write these actions on the WORKSHEET.
3 - Have students determine which statements in the Constitution apply to each activity that they identified. Write the statements on the WORKSHEET.	Identify the constitutional provisions and write them on the WORKSHEET.
4 - Instruct students to hand in their WORKSHEETS.	Hand in the WORKSHEET.

-- The WORKSHEETS can be graded and returned to students at the beginning of the next class session, when the elements of Due Process of Law can be reviewed. They should have identified the following elements:

UNLIMITED GOVERNMENTACTIVITY	CONSTITUTIONAL PROVISION
The teacher makes a new rule and applies it to Victim's action, even though it was not a rule when the action was taken. (Remember that Victim had not even done what he was accusd of doing, however.)	Article I, Section 9, Clause 3 No. . . ex post facto Law shall be passed.
Victim's father was held without being charged with a crime.	Article I, Section 9, Clause 2 The Privilege of the Writ of Habeas Corpus shall not be suspended. . .
Victim's father was found guilty of the same offense after being found innocent on an earlier occasion.	Amendment V . . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb. . .
Furthermore, the judge found Victim's father guilty without hearing any testimony or evidence.	Amendment V . . . nor be deprived of life, liberty, or property, without due process of law. . .

UNLIMITED GOVERNMENT - Pretest

DIRECTIONS: Read the definitions below carefully. Write the letter of the correct term next to the definitions.

___ 1. Government that protects the rights of the individual citizens.

___ 2. A list of personal rights and liberties guaranteed by the Constitution.

___ 3. Following known and fair procedures when dealing with persons who are accused of some violation of the law.

___ 4. A prisoner is brought before a judge to see if the prisoner is being held lawfully.

___ 5. Guarantees that government may not deny to citizens.

___ 6. The legislature declares that a person is guilty of a crime and sentences him to 10 years in prison.

___ 7. Punishment for an action that was not a crime when it occurred but was declared to be a crime at a later time.

___ 8. Being tried twice for the same offense.

A. DUE PROCESS OF LAW

B. EX POST FACTO LAW

C. CIVIL LIBERTIES

D. BILL OF ATTAINDER

E. BILL OF RIGHTS

F. LIMITED GOVERNMENT

G. WRIT OF HABEAS CORPUS

H. DOUBLE JEOPARDY

DUE PROCESS OF LAW WORKSHEET

DIRECTIONS: List four (4) activities that take place in the PLAY which illustrate unlimited government. Then, list what part of the Constitution applies to the activity that you identified and quote the phrase from the Constitution that describes the prohibited activity.

UNLIMITED GOVERNMENT ACTIVITY	CONSTITUTIONAL PROVISION

UNLIMITED GOVERNMENT PLAY

CAST: NARRATOR
TEACHER
THUG
VICTIM'S FATHER
VICTIM
BULLY
JUDGE

SCENE I: A CLASSROOM IN A JUNIOR HIGH SCHOOL

NARRATOR: School has changed for Victim. The teacher now talks against him and makes fun of his mom and dad. The teacher says that all of Victim's accomplishments are accidents or never really happened. He tells Victim to stop lying about what he knows to be true. It has now become the correct and expected thing for bullies to tease and beat up Victim's group during and after school. Over the last two months Victim has become very tired of being called wimpy by all of his classmates.

SETTING: THE BELL RINGS -- STUDENTS FILE INTO EIGHTH GRADE HISTORY CLASS.

BULLY: (Enters, takes paper clips from the teachers' desk and puts them on Victim's desk.)

THUG: Did you get the paper clips on the right desk?

BULLY: Everything is going according to our plan.

(VICTIM ENTERS THE CLASSROOM.)

THUG: He's the one! (Pointing at Victim.)

BULLY: (To the teacher) He stole the paper clips from your desk! Victim is always causing trouble.

TEACHER: You're always doing things to disrupt the class. You are to be expelled from school for taking the paper clips from my desk.

VICTIM: (Backs away, feeling confused, scared.) But Teacher, you said we could take paper clips from your desk whenever we needed them.

TEACHER: Well, I just made a new rule and you are guilty of breaking it. So you are out of this class! Go home and don't come back.

NARRATOR: Later that day Victim's father went to school to protest the unfair treatment of his son. The next day his father was handcuffed by police and put in jail. He was kept in jail for several days without being told what he had done wrong. Finally, he was brought before a Judge. After hearing evidence from Victim's father and several of the children in Victim's class, who told the judge exactly what had happened, the judge ordered the police to release Victim's father because he was not guilty of any crime. But, as he was going home, a different policemen arrested Victim's father and took him to a different judge to hear the same charges against him.

In Scene 2 we find out what happened next:

SCENE 2: IN COURT

JUDGE: I find you guilty and sentence you to two years in prison.

VICTIM'S FATHER: But you haven't even heard any evidence against me. Besides, I have already been found innocent of these same charges.

JUDGE: The policeman told me all that I need to know. Court adjourned.

NARRATOR: Fortunately, many citizens became concerned about Victim's father and several other people who were treated in a similar manner by the governmental officials. These citizens joined together and demanded that Victim's father be released from prison. Because of the actions of these citizens, Victim's father was released from jail. Furthermore, the local city council directed that Victim's father should be paid his regular salary for the days that he spent in jail.

DUE PROCESS OF LAW

ARTICLE I, Section 9, Clauses 2 and 3.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

AMENDMENT V.

. . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; . . . nor be deprived of life, liberty, or property, without due process of law . . .

VI - C. DUE PROCESS OF LAW AND THE JAPANESE INTERNMENT

OVERVIEW of the lesson: The Sixth Amendment lists rights that are to be guaranteed to persons who are accused of violating the law. In this lesson students are introduced to these rights, but they also study the constitutional provision that involves the Great Writ--the Writ of Habeas Corpus--and note that it may be suspended when required by public safety, rebellion or invasion. Then students study an instance when such a suspension occurred during World War II--the Executive Order to relocate Japanese-Americans from the West Coast. Students identify Sixth Amendment rights that are violated. They also listen to an account of the experience from the viewpoint of an internee and are asked to imagine the feeling of people who were placed in the camps. The lesson evaluation asks students to compare and contrast the circumstances of the Japanese Internment with a hypothetical situation in which they are sent to detention after school without being informed why they are being punished.

Students who complete this lesson successfully, will be able to identify reasons for and against the idea that government has the authority to suspend citizen rights during emergencies.

The **PURPOSE** of this lesson is to teach students that civil rights and liberties, such as those listed in the Sixth Amendment, are not always guaranteed merely because they are stated in the Constitution. During times of emergency, civil rights and liberties may be limited by the government.

NECESSARY PREPARATION

Duplicate copies of the following handouts:

WAR AND CIVIL RIGHTS
HABEAS CORPUS AND THE SIXTH AMENDMENT
THE JAPANESE-AMERICAN INTERNMENT (1942-44)
LESSON EVALUATION

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Ask: "Have you ever been told that you must go somewhere you did not want to go, and then were forced to go there without having a chance to explain why you did not want to go?"	Respond with a "YES" or a "NO."

TEACHER	STUDENTS
2 - Is this treatment "fair?" Could there be times when this would be OK?	Provide answers. Hopefully, identify instances when this would be helpful to the student, such as going to the hospital for an operation.
3 - Ask: "What are reasons why the government should, or should not, have the power to suspend the rights of citizens during times of great difficulty, such as riots, war, and invasions?" Write responses on the board in two columns. In column 1, place the arguments that support the government's power to suspend rights and in column 2 place the arguments that say the government should not have this power.	Provide reasons for government restrictions on rights and reasons why government should not be able to restrict rights.
4 - Distribute the WAR AND CIVIL RIGHTS handout. Ask students to read the questions. Tell them that the answers will not be discussed now; however, they should look for answers to the questions during the lesson.	Read the questions. Identify questions that cannot be answered.
5 - Distribute the handout titled: HABEAS CORPUS AND THE SIXTH AMENDMENT. Ask students to read these sections.	Read the sections from the Constitution.
6 - Ask students to identify six rights that are included in the Sixth Amendment.	Volunteer answers that identify the rights.

-- These include:

(1) a speedy and public trial,
(2) an impartial jury from the area where the trial is to be held,
(3) information about the specific charges placed against the accused,
(4) witnesses who testify face to face against the accused,
(5) a court order that forces witnesses for the accused to appear and testify in court whether they want to or not,
(6) the right to an attorney to help with his/her defense.

TEACHER	STUDENTS
7 - Distribute the JAPANESE-AMERICAN INTERNMENT (1942-44) handout. Ask students to read the account and write answers to the questions that follow the account.	Read the account. Write answers to the questions.
8 - Ask selected students to share their answers with the class.	Selected students share answers with the class.
9 - Read the following account aloud to help students understand the feelings of an interned Japanese-American. Ask students to close their eyes and imagine they are Japanese-American citizens in one of the internment camps, and to listen to the story that might have been told by another person in the camp.	Close eyes and imagine they are a Japanese-American in an internment camp.

-- I am a man, 50 years old. I had a nice farm, the land was very rich, and I worked many hours each day out in the fields. One day when I came back to my house after working in the field, a soldier told me that our entire family would have 24 hours to report to the railroad station in town. I said that I needed to stay to care for my property because some of the people had been calling me and my family "Japs," and they were throwing rocks at our windows. Besides, I told him that none of my three children could speak Japanese, that we were completely loyal to the United States, and that one of my sons was serving in the U.S Army. He said that none of these things mattered; in fact, there was no acceptable excuse--we must all report to the train station the next night at 6 p.m. And he said he did not know if or when we would be able to return. He suggested that I sell everything, because we could only take along whatever we could carry.

I did what I could the next day to sell my property. But the best I could do was get about ten percent of the real value of the land. Nobody would pay me any more than that. We just had to leave most of what we owned behind.

The next night when we arrived at the train station, we found that all of the Japanese people in our community were there. We were placed in a train car and taken here to this camp out in the desert. We have been here for more than a year. I don't know when we can leave or what I will do when we are allowed to leave.

TEACHER	STUDENTS
10 - Have pairs of students tell one another how they might have felt if they had been one of the Japanese-Americans who was placed in the relocation camp.	Share with another student how you might have felt if you had been one of the people in the camp. Then listen to a classmate tell how he/she believes he/she might have felt.
11 - Ask students why they believed that other people did not try to stop the government from relocating the Japanese-Americans.	Try to provide answers.

-- Apparently some people did not want the Japanese living near them. Some of these people were afraid because they thought the Japanese would help Japan in the war, and some were interested in obtaining the rich farm land and other property owned by the Japanese.

TEACHER	STUDENTS
12 - Have students refer to the WAR AND CIVIL RIGHTS handout and ask them to anwer the questions.	Answer the questions.
13 - Ask a selected group of students how they answered the questions.	Selected students tell how they answered the questions.
14 - Ask if other students disagree with any answers, and if so, Why?	Students who disagree with answers tell why they disagree.

-- The answers to questions 1, 2, 3, 7 and 8 are TRUE.
" " " " 4, 5 and 6 are FALSE.

TEACHER	STUDENTS
15 - Return to the list of arguments placed on the board at the beginning of the lesson. Ask students to explain the consequences that may occur as a result of each item listed. (Note that a strong case may be made for each side.)	Explain what consequences may occur.

CLOSING THE LESSON

Have students provide answers to the questions on the LESSON EVALUATION form.

WAR AND CIVIL RIGHTS

Circle the answer that you believe is correct for each of the following:

1 - In times of war the government can have you arrested without telling you why you are being held.

TRUE FALSE

2 - The government can take away your property during wartime without a trial and without paying you for it.

TRUE FALSE

3 - An executive order comes from the President.

TRUE FALSE

4 - The Supreme Court may not overrule an executive order.

TRUE FALSE

5 - The Senate must approve an executive order.

TRUE FALSE

6 - The Writ of Habeas Corpus refers to people who are dead.

TRUE FALSE

7 - People born on United States soil are American citizens.

TRUE FALSE

8 - During World War II, all of the Japanese-Americans living on the west coast were rounded up and placed in camps that were located some distance from the Pacific Ocean.

TRUE FALSE

HABEAS CORPUS AND THE SIXTH AMENDMENT

Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article I, Section 9, Clause 2:

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

List six (6) rights that are included in the Sixth Amendment:

1 -

2 -

3 -

4 -

5 -

6 -

According to the guideline in Article I, when may the Writ of Habeas Corpus be suspended?

THE JAPANESE-AMERICAN INTERNMENT (1942-44)

Not long after Japanese airplanes attacked Pearl Harbor on December 7, 1941, President Franklin D. Roosevelt ordered that all Japanese, including American citizens of Japanese ancestry, be arrested and moved into relocation camps. This was accomplished after President Roosevelt issued Executive Order #9066--an action the President can take without Congressional approval.

No charges were made against anyone, and no trials were held. Yet all these people, most of whom were American citizens, lost their freedom. In some cases they were able to sell their property during the few hours they were given before they were to report to be transported to the relocation centers. But they usually received only a small fraction of the real value of the property, and many were not able to obtain any money for the property that they owned.

The government released the Japanese in 1944, about a year before the war ended. There was no compensation, apology, or admission of wrong doing from the U.S. government. In fact, in Korematsu v. United States (1944), the U.S. Supreme Court declared that the relocation order did not violate the Constitution.

---

1 - Does this demonstrate a difference in laws during wartime and peacetime? Which section of the Constitution permits this to happen?

2 - If it had been peacetime, what Constitutional rights, listed in Article I and in Amendment VI, would Japanese-Americans have been been able to claim?

3 - Could what happened to the Japanese-Americans happen again? Explain.

LESSON EVALUATION

Suppose that you are told by your teacher that you did something wrong and you were sent to detention after school without having a chance to find out why you were sent to detention.

1 - How was what happened to you similar to what happened to the Japanese during World War II?

2 - How was what happened to the Japanese during World War II different from what happened to you?

CHAPTER VII

OTHER LIBERTIES

OVERVIEW - SUBSTANCE AND SEQUENCE

During the Constitutional Convention one of the objections raised by the opponents of a Bill of Rights was that it would be dangerous to enumerate or list citizen liberties in the basic document because some might be omitted. It might then be inferred that any rights that were not listed might be restricted by the government. The Ninth Amendment was proposed to counter that argument. However it was not used as a vehicle for adding additional citizen protections to those listed in the Bill of Rights until 1965! Lesson VII - A. explains how this occurred when the right to privacy was added to those liberties that were specifically enumerated in the Bill of Rights.

·Beginning in the 1960s, the United States Supreme Court decided several cases that involved the extent to which provisions in the Bill of Rights are applicable to students in elementary and secondary schools. In Lesson VII - B. students examine the decisions in two important Supreme Court decisions that provide guidelines for answering this question. Thus students learn that guarantees in the Bill of Rights do apply in the schools, but the exercise of these liberties may not disrupt the orderly atmosphere in which learning can occur.

The prolonged struggle for the right to vote provides the focus for the final lesson in the Chapter. Four amendments to the Constitution constitute the context within which students, who play the role of a group of people who were disenfranchised during part of United States history, learn when their group was permitted to participate in the democratic decision making process.

LESSONS IN THE CHAPTER

VII - A. THE NINTH AMENDMENT, PRIVACY RIGHTS, AND INCORPORATION PLUS

VII - B. THE BILL OF RIGHTS IN SCHOOLS

VII - C. VOTING RIGHTS AMENDMENTS

VII - A. THE NINTH AMENDMENT, PRIVACY, AND INCORPORATION PLUS

OVERVIEW of the lesson: The Ninth Amendment which states, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people", is a potential source for enumerating individual rights that are not listed specifically in other parts of the Bill of Rights. In this lesson students will learn why the Ninth Amendment provision was included in the Bill of Rights. Then they discover that portions of the First, Third, Fourth, Fifth and Fourteenth Amendments were used, along with the Ninth Amendment, to create a right to privacy. Finally, students learn that this "new right" of privacy has been applied to the state governments through a process known as "incorporation plus."

Students who complete this lesson successfully will realize that a new constitutional right--the right to privacy--was created by the U.S. Supreme Court in 1965.

The **PURPOSE** of this lesson is to teach students (A) why the Ninth Amendment was included in the Bill of Rights, (B) how it served as a vehicle for proclaiming a right to privacy in 1965, and (C) how this right was "incorporated" and thus serves as a prohibition against state governmental actions.

NECESSARY PREPARATION

1 - Duplicate copies of the **EXCERPTS FROM THE AMENDMENTS** and the **LESSON EVALUATION** handouts.
2 - Review Lesson IV - C. concerning the Incorporation process.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Inform students that in this lesson they will learn how the U.S. Supreme Court, in 1965, "discovered" a new right to add to others that are listed in the Bill of Rights.	Listen.

TEACHER	STUDENTS
2 - Distribute the EXCERPTS FROM THE CONSTITUTION handout. Have students read the Ninth Amendment. Ask them to write one sentence that explains what they believe it means. Also ask them to write a sentence that explains why this amendment might have been included in the Bill of Rights.	Read the Ninth Amendment and write a sentence that explains what it says. Write another sentence that explains why this amendment might have been included in the Bill of Rights.
3 - Ask students to share their answers.	Volunteers share their answers.

-- These explanations should focus on the idea that the people may have rights other than those included in the list of rights in the Constitution or in the first eight amendments of the Bill of Rights. Therefore, James Madison felt that it was important to include this amendment as a means to ensure people that, just because some important right is not mentioned in the Constitution, the right still may be one that people should enjoy.

TEACHER	STUDENTS
4 - Ask students to read the EXCERPTS from Amendments I, III, IV, V, and XIV and try to discover what right might be created from the statements.	Read the EXCERPTS and try to determine what right might be created by the statements.
5 - Ask selected students for their answer.	Selected students share their answers.

-- In Griswold v. Connecticut (1965), Justice Douglas concluded that these guarantees in the Bill of Rights create "zones of privacy" that government may not deny to citizens.

It is not immediately obvious why the First Amendment is related to the right to privacy. Justice Douglas stated it this way when he delivered the opinion of the Court in Griswold:

> The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents' choice--whether public or private or

> parochial is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First First Amendment has been construed to include certain of those rights. . . .
>
> In NAACP v. State of Alabama [357 U.S. 44 (1958)], we protected the "freedom to associate and privacy in one's associations," noting that freedom of association was a peripheral First Amendment right. Disclosure of membership lists of a constitutionally valid association, we held, was invalid "as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association." In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion.
>
> . . . Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one. . . .

6 - Inform students that this right of PRIVACY was then used to strike down a Connecticut state law, as violating the Constitution.	Listen and ask questions for clarification.
7 - Ask students to write one or two sentences that explain why applying the right of privacy against state government might be called "Incorporation plus." Remind them that INCORPORATION (See Lesson IV -C) involves applying the provisions of the Bill of Rights to the actions of state governments.	Write one or two sentences that explain why this process may be called "Incorporation plus."
8 - Ask selected students to read their answers.	Selected students read answers.

-- Incorporation involves applying a provision in the Bill of Rights to the actions of state governments. In this case, the right of privacy that was applied to a state government, even though the right of privacy is not stated specifically in the Bill or Rights; thus, it become an **additional** right that is incorporated--therefore it is referred to as "incorporation plus."

TEACHER	STUDENTS
9 - Ask students if they can think of other rights that might be "found" in the Bill of Rights.	Consider whether other rights might be "found" in the Bill of Rights.
10 - Ask for responses to this question.	Provide responses.

Mini-lecture:

Inform students that this right of privacy was used by the U.S. Supreme Court in 1973 in the Roe v. Wade decision to justify a grant of authority to women who wish to have an abortion during the first six months of a pregnancy. Justice Harry Blackmun, speaking for seven members of the Court said that "This right of privacy, whether it is founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."

CLOSING THE LESSON

Have students complete the LESSON EVALUATION handout.

Answers such as the following will indicate that students understand the information presented in the lesson:

1 - Privacy

2 - In parts of Amendments I, III, IV, V, and XIV.

3 - It states that people may have more rights than those listed specifically in the Constitution and the Bill of Rights.

4 - So that people would not be denied a right just because it is not listed in the Constitution.

5 - The right of privacy was applied to the actions of Connecticut (a state government) even though the right is not stated specifically in the Bill of Rights. Thus privacy is an addition to the specific rights that are listed in the Bill of Rights and that have been incorporated.

EXCERPTS FROM THE AMENDMENTS

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT I

Congress shall make no law. . .abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble . . .

AMENDMENT III

No soldier shall, in time of peace be quartered in any house, without the consent of the Owner . . .

AMENDMENT IV

The right of people to be secure in their persons, houses, papers, and effects, against unreasonable serches and seizures, shall not be violated. ..

AMENDMENT V

No person [s]hall be compelled in any criminal case to be a witness against himself . . .

AMENDMENT XIV

[N]or shall any state deprive any person of life, liberty, or property, without due process of law . . .

LESSON EVALUATION

1 - What is the right that we studied in this lesson?

2 - Where do you find this right listed in the Bill of Rights?

3 - What does the Ninth Amendment say about the rights that citizens may enjoy?

4 - Why was the Ninth Amendment included in the Bill of Rights?

5 - Explain what is meant by the term "incorporation plus."

VII - B. THE BILL OF RIGHTS IN SCHOOLS

OVERVIEW of the lesson: Children have traditionally been treated differently than adults who violate the same laws. Until 1967, the U.S. Supreme Court had not ruled whether the normal protections of due process of law, that apply to adults, also apply to children in the juvenile justice system. In that year, the Court decision of In re Gault extended several components of due process to juveniles since "the Bill of Rights is [not] for adults alone." Two years later, the case of Tinker v. Des Moines, evolving from the Vietnam War controversy, addressed the question of whether the Bill of Rights applied to children in the public schools. Then, in 1988, freedom of the press was the issue in Hazelwood v. Kuhlmeier. This case concerned the extent that school officials could censor items in a school newspaper. In this lesson students will study the facts in Tinker and Hazelwood. Then, selected students will debate the merits of the issues in each case. Class members will then write the decision they believe should be made by the Court. Finally they will compare their decision with the ruling handed down by the U.S. Supreme Court.

Students who complete this lesson successfully will learn of those instances when First Amendment rights can protect expression in schools as well as the circumstances when school officials may suppress activities to maintain an orderly atmosphere in which learning can proceed.

The **PURPOSE** of this lesson is to teach students that the Bill of Rights applies to students in the public schools, but that school officials also have authority to enforce regulations to ensure that the conditions for learning are not disrupted.

NECESSARY PREPARATION

1 - Select two students (or four, if you prefer that students work in pairs) to present the pro and con arguments in the case of Tinker v. Des Moines. Provide them with a copy of the Facts in the case as well as the arguements on both sides. Have these students prepared to debate the issues on the day this lesson is taught in class.

2 - The same preparation is needed for the case of Hazelwood v. Kuhlmeier.

3 - Duplicate copies of the following handouts:

  (A) **THE BILL OF RIGHTS IN THE SCHOOLS**
  (B) **THE TINKER DECISION**
  (C) **THE HAZELWOOD DECISION**
  (D) **LESSON EVALUATION**

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Ask students, "Do the guarantees in the Bill of Rights apply to students in school?" (Allow students to answer without indicating whether you agree or disagree with their responses.)	Volunteer answers.
2 - Inform students that this lesson will concern the decisions in two important U.S. Supreme Court cases that involve the extent to which the guarantees in the Bill of Rights apply to students in schools.	Listen.
3 - Distribute THE BILL OF RIGHTS IN THE SCHOOLS handout. Ask students to read the facts about the case of _Tinker v. Des Moines._	Read the facts concerning the _Tinker v. Des Moines_ case.
4 - Ask the students who prepared arguments in advance to debate the positions that support and that refute the position of the Tinker children. This will be followed by questions from the class, if they desire clarification concerning the issues presented.	Listen and ask questions for clarification.
5 - Have students write a paragraph that describes how they believe the U.S. Supreme Court decided the case	Write a paragraph that describes how you think the Court decided the case.
6 - Distribute the _Tinker_ decision handout. ask students to read the decision and write answers to the questions that follow.	Read the decision. Write answers to the questions.
7 - Ask selected students to share their answers.	Selected students share answers.

---

1 -- In response to Question 1, they should recognize that the majority believed there was no significant disturbance in school, whereas Justice Black said the students were diverted from their schoolwork.

2 -- This difference was the critical one for determining who the justices believed should win.

3 -- If the armband did not disrupt the educational process, it would be protected expression under the First Amendment.

TEACHER	STUDENTS
8 - Have students read the facts about the case of Hazelwood v. Kuhlmeier.	Read the facts concerning Hazelwood.
9 - Ask the students who prepared the arguments to debate the positions that support the school and Cathy Kuhlmeier. Permit the class to ask questions for clarification after both sides have been presented.	Listen and ask questions for clarification.
10 - Have students write a paragraph that tells how they believe the U.S. Supreme Court decided the case.	Write a paragraph that describes how you believe the Court decided the case.
11 - Distribute the HAZELWOOD DECISION handout. Ask students to read the decision and write answers to the questions that follow.	Read the decision. Write answers to the questions.
12 - Ask selected students to share their answers.	Selected students share their answers.

---

1 - Justice White points out that, unlike in Tinker where students are merely expressing a personal opinion, this is a school sponsored activity that is part of the curriculum.

2 - The school officials would need to be able to show that they were attempting to teach the students that what they were doing was not appropriate in a journalism class.

3 - When an activity is part of the curriculum, school officials merely need to show that their actions are reasonably related to legitimate teaching and educational concerns.

CLOSING THE LESSON

Distribute the LESSON EVALUATION handout. Ask students to provide written answers to the questions.

Answers such as those provided after Step 7 for the Tinker case and after Step 12 for the Hazelwood decision will indicate that students understand the major ideas presented in the lesson.

THE BILL OF RIGHTS IN THE SCHOOLS

Tinker v. Des Moines Independent Community School District (1969)

A group of adults and students in Des Moines planned to protest American involvement in the Vietnam War by wearing black armbands. In response, the public school adopted a policy that students wearing armbands to school would be suspended until they agreed to return without the armbands. John Tinker and his sister, Mary Beth, wore black armbands to school. When they refused to remove them they were suspended. A case was filed in a U.S. court asking that the school district be prohibited from disciplining the Tinker children.

After hearing the arguments for the Tinker children and for the school district, write a paragraph that describes what you think the U.S. Supreme Court decided.

Hazelwood School District v. Kuhlmeier (1988)

Cathy Kuhlmeier and two other students, who were staff members of their High School newspaper, filed a suit claiming a violation of their First Amendment rights. The complaint was against action taken by the school principal, who had deleted two pages from an issue of the school paper. The principal objected to two articles; one described some Hazelwood High students' experiences with pregnancy and the other descussed the impact of divorce on the lives of some students at the school. The principal felt that readers might be able to identify the female students in the pregnancy article and that references to birth control would be unsuitable for younger students. He objected to the divorce article because it identified a student who complained about her father, without giving the parents a chance to respond. Since it was near the end of the school year, the principal felt there was not enough time to make changes in the articles, so he directed that the entire two pages on which these articles appeared be deleted from the paper.

After hearing the arguments for the School District and for Cathy Kuhlmeier, write a paragraph that describes what you think the U.S. Supreme Court decided.

The Tinker Decision

Seven of the Justices agreed that the Tinker children should win. Justice Abe Fortas said that, "First Amendment rights. . . are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Although the school setting allows some limitations on the freedom of expression, the action of school officials in this case was not "reasonable" merely because they felt that wearing armbands would cause a disturbance. Here the students' protest was protected speech under the First Amendment, because it was "divorced from actual or potential disruptive conduct." Besides this particular symbol was singled out for prohibition; students were permitted to wear political campaign buttons and other symbols.

Justice Hugo Black, dissented. He concluded that wearing black armbands did direct other students' minds from their schoolwork; therefore, it accomplished exactly what the school officials feared would occur. He also believed that the decision by the majority encouraged students to defy their teachers.

QUESTIONS:

1 - What different conclusions concerning the facts in the case were reached by Justice Fortas and Justice Black?

2 - Was this disagreement important for them when deciding whether the Tinker children's actions were protected by the First Amendment? Explain.

3 - State a conclusion that summarize when wearing an armband might be a protected form of First Amendment expression in public schools.

The Hazelwood Decision

Justice Byron White delivered the decision for a majority of five Justices of the U.S. Supreme Court. They voted to uphold the principal's right to "exercise editorial control over the contents of a high school newspaper produced as part of the school's journalism curriculum." He concluded that, unlike the situation in Tinker where students were expressing personal opinions on school grounds, school officials can exercise greater control over student expression that involves school-sponsored activities that are part of the school curriculum. Therefore, "educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical [teaching/educational] concerns."

Justice William Brennan and two other Justices dissented. They believed that the majority took away First Amendment protection to expressive activities by students in public schools that had been protected by the Tinker decision. Justice Brennan felt that the Tinker guidelines should require the Court to question whether it was appropriate for the curriculum in the journalism class "to teach students that the press ought never to report bad news, express unpopular views, or print a thought that might upset its sponsors." Of course, Brennan concludes, the school officials do not claim these to be part of their instructional goals.

QUESTIONS:

1 - How does Justice White say that the situation in Hazelwood is different from the situation in Tinker?

2 - What does Justice Brennan say would be needed to justify censorship in this case?

3 - State a conclusion that describes when public school officials may use censorship.

Arguments for the Tinker Children

The First Amendment protects the free speech rights of students. The school district's ban on the wearing of armbands is unconstitutional. The First Amendment is designed to protect the expression of views that may be unpopular.

The use of arm bands is a peaceful expression that is not intended to be disruptive, and it is very much like other types of expression that have been permitted in the past by students at the school. Students have been allowed to wear religious symbols, political campaign buttons, and even an Iron Cross, a Nazi symbol associated with Hitler.

Even if other students had objected to the arm bands, the school officials should have permitted them, rather than denying the Tinker children their First Amendment Free Speech rights.

Arguments for the Des Moines School District

School officials must be allowed to use judgment so that an orderly atmosphere in the classroom is preserved. The school board held hearings and decided that the arm bands policy was needed to prevent disturbances in the school. This action may have prevented the kind of disruption that occurred throughout the United States during this period. The courts should not be the agency to decide whether this is wise as long as it is a reasonable exercise of judgment by the school authorities.

The rights of students do not extend to demonstrating in schools and disrupting the discipline that is needed in the classroom. If students are told they can wear arm bands, it will encourage them to defy their teachers and other authorities.

Even adult citizens do not have the right to demonstrate whenever and wherever they please. The government may control the use of it own property when it does not unlawfully discriminate against anyone--as is the case in Des Moines.

Arguments for the Hazelwood School District

The school newspaper is prodeuced by a journalism class and is thus a part of the school curriculum. It is a teaching tool that is designed to develop skills in journalism. Thus it is the responsibility of teachers and school officials to train students in the proper use of these skills. One of the responsiblitities of journalists is to ensure that the rights of others are protected.

There was no time before the paper was to be published to give students the instruction needed to accomplish the changes required to protect the rights of students and parents who would be injured by publication of the two articles. Therefore, it was necessary for the principal to delete them from the paper. Since the school newspaper is not a public forum, it was a legitimate exercise of the principal's authority for him to delete the articles.

Arguments for Cathy Kuhlmeier

The student newspaper is a public forum for the students to express their views; therefore, their articles are protected by the First Amendment.

In the case of Tinker v. Des Moines (1969) the U.S. Supreme Court ruled that school officials could not expel students from wearing black arm bands to protest American involvement in the Vietnam War. The Court said that students have a right to free speech [and press] as long as they do not seriously disrupt the educational process. In this case there was no disruption of the educational process. Furthermore, censoring the articles without any communication with the student journalists showed that there was no real commitment to a free exchange of ideas. That is exactly what the free speech and press clauses of the First Amendment are designed to prevent.

LESSON EVALUATION

1 - Select one of the two cases studied in this lesson and list the major question that was considered by the U.S. Supreme Court.

2 - What was the decision of the U.S. Supreme Court in this case? (Who won?) Why?

3 - After studying that decision, what conclusion can you state about the extent that the Bill of Rights applies to students in public schools?

VII - C. VOTING RIGHTS AMENDMENTS

OVERVIEW of the lesson: Following adoption of the Constitution in 1789, states retained the authority to determine voting qualifications for their citizens. In most states this resulted in white male property owners being the only persons who were eligible to vote. In this lesson students assume the role of either a white male property owner, a black citizen, a woman, or a person who is less than 21 years old. By conducting a mock election at different points in time during the past 200 years, students learn how the voting rights amendments have extended the franchise.

Students who complete this lesson successfully will understand not only how and when changes that extended the right to vote to additional people were made, but they will also experience the feelings held by persons who were denied the opportunity to participate in public policy decision making.

The **PURPOSE** of this lesson is to demonstrate how the right to vote was extended through the formal amendment process, thus permitting additional groups to participte in the governing process. The lesson is also intended to assist students to understand the feeling involved when people, who are fully qualified to participate in decision making, are denied the opportunity to do so.

NECESSARY PREPARATION

1 - Prepare colored slips of paper as described in SEQUENCE OF INSTRUCTION #3.
2 - Duplicate copies of the **AMENDMENT CHART** and the **VOTING RIGHTS QUESTIONNAIRE**.
3 - Determine whether to have students read the 15th, 19th, 24th and 26th amendments from their textbooks or from another source.
4 - Determine the subject to be used as the basis for class discussion and voting. (See Step #4 in the SEQUENCE OF INSTRUCTION.)

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Ask students, "Who can vote in elections today?" (Do not provide a "correct" answer. Merely permit students to suggest answers they think are correct.)	Volunteer requirements that are believed needed in order to vote.

TEACHER	STUDENTS
2 - Tell students that voting qualifications today are different than they were 200 years ago. Tell them that by assuming the role of a person at different points in time they will learn how new groups of people were added to the list of eligible voters.	Listen.
3 - Give each student a colored piece of paper. Papers should be Red, Blue, Yellow, Green and Purple. About 2/3 of the red papers should be marked with a "P".	Obtain a colored piece of paper.
4 - Conduct simulation #1. Inform the class that there will be a vote. (Explain the subject of the vote as discussed below.)	Listen to the topic that is the subject for the vote.

-- The vote may be to elect class officers, to establish class rules, or to set up a city government and vote on laws they want the city to use. The specific issue is not as important as the fact that it should be something that directly interests the students. If you can provide some award for the winner of each vote, that is desirable.

5 - Inform students that only people holding red papers marked with a "P" may discuss the issues and vote.	Listen to instructions and determine who may discuss the issues and vote.
6 - Have those students with a red paper marked "P" discuss the issue and vote.	Those students with a red paper marked "P" discuss the issue and vote.
7 - Tell students that this is an example of who could vote in the period of time following passage of the Constitution in 1789. Ask them, "Who do you think these people were, who were able to vote at that time?"	Attempt to identify the voters as white males, over the age of 21, who owned property.

Mini-lecture:

Article I, Section 4 of the Constitution grants the states power to determine voting qualification. The states made property ownership an important qualification for voting. Most states limited voting to white males who owned property, although in a few states female and black citizens who owned property could vote. At this time in history there were no other countries which allowed as much democracy as did the United States. This began a democratic tradition that left the door open to change and the expansion of democracy. Change could come through action by the individual states or through a constitutional amendment. The first change was made by the individual states. From 1815 to 1829 property qualifications were dropped in most states, and new states that were added after that did not have property requirements; some of the states which still allowed blacks to vote continued to require that they be property owners. After the Civil War, states still did not allow blacks to vote. Congress proposed the Fifteenth Amendment. It was ratified in 1870 and granted blacks the right to vote.

TEACHER	STUDENTS
8 - Have students read the 15th Amendment.	Read the 15th Amendment.
9 - Distribute the AMENDMENT CHART and have students complete the information needed for the 15th Amendment.	Write the information needed for the 15th Amendment.
10 - Conduct Simulation #2. Have a second discussion and class vote. This time ALL students with RED papers may participate. Before students with blue papers may participate, they need to pass LITERACY TEST A. Read the following questions aloud and ask students with blue papers (they represent black males over 21) to write answers to the questions.	Students with blue papers, write answers to the literacy test questions.

LITERACY TEST - A

A. Which of the following is a right guaranteed by the Bill of Rights?
____ Public Education ____ Employment ____ Voting ____ Trial by Jury

B. A United States Senator elected at the general election in November takes office the following year on what date? ________________

C. A United States Senator is elected for a term of ____ years.

D. A person appointed to the United States Supreme Court is appointed for a term of ____________________.

TEACHER	STUDENTS
11 - Ask students for their answers.	Students with blue papers volunteer their answers.

Correct answers are:

A - trial by jury (Amendment VI)
B - January 3 (Amendment XX)
C - six (Amendment XVII)
D - life or during good behavior (Article III, Section 1)

-- A student must answer all four questions with complete accuracy in order to qualify to vote. (Inform students that the questions on this test are taken from an exam used in Alabama that was declared to be unconstitutional by a federal court in 1965.)

-- Most likely no one will pass, thus again only those holding red papers will vote (they no longer need a "P" on the red paper, however.) You may want to suggest some privileges that those holding red papers may vote for themselves.

12 - Ask students for their responses to the following questions:	Respond to the questions.

(A) For non-voters-- What do you think about this system? Is it good or bad? Explain.
(B) For voters-- What advantage does this system have for you? Do you like it? Do you want to share power with everyone else?
(C) Did the Fifteenth Amendment make the U.S. more democratic? Why or why not?
(D) Who is still left out of the voting process?

Mini-lecture:

Not all states used literacy tests. They were used primarily by southern states as a method to prevent blacks from voting. Other methods used to limit people from voting were poll taxes and the grandfather clause (this only allowed people to vote if their grandfather was a voter in 1865; naturally Southern blacks were not able to vote at that time). Thus the Fifteenth Amendment was not very effective until 1965, when the Voting Rights Act was passed by Congress.

Women began working as an organized group in 1848 in order to gain suffrage. By 1920 many individual states had given women the right to vote, but some granted only partial suffrage, such as the right to vote in school elections. In 1920 the Nineteenth Amendment was added to the Constitution.

TEACHER	STUDENTS
13 - Have students read the 19th Amendment. Ask them to complete the AMENDMENT CHART for this amendment.	Read the 19th Amendment. Complete the AMENDMENT CHART for the amendment.
14. Conduct simulation #3. To demonstrate the effect of the 19th Amendment, give Literacy Test-B to those students holding blue and green papers (green represents black women over the age of 21.)	Those with blue and green papers take Literacy Test-B.

LITERACY TEST - B

A. The Vice President presides over the ______________________.

B. If it were proposed to join Alabama and Mississippi to form one state, what groups would have to vote approval in order to have this done?

C. The Supreme Court is the chief lawmaking body of the state.
TRUE or FALSE

D. The electoral vote for President is counted in the presence of two bodies. Name them: ____

---

15 - Ask students for their answers. Again, the entire answer must be provided, otherwise it is incorrect.	Blue and green paper holders volunteer answers.

Correct answers are:

A - Senate (Article I, Section 3, Clause 4)
B - the Alabama and Mississippi state legislatures and Congress (Article IV, Section 3, Clause 2)
C - false; the legislature is the chief lawmaking body
D - the U.S. Senate and House of Representatives (Amendment XII)

-- Again, it is likely that none will answer all questions correctly. Therefore, only students with red papers or yellow papers (white women over the age of 21) can discuss and vote.

-- If you want to show how the person who administered the exam could affect the outcome, have part of the group answer numbers 1 and 3, the easier questions, and the others answer numbers 2 and 4--the more difficult questions.

---

16 - Ask students, "Have voting rights become more democratic?" "Who is still denied the right to vote?"	Volunteer answers.
17 - Have students read the 24th Amendment and complete the AMENDMENT CHART.	Read the 24th Amendment and complete the CHART.

Mini-lecture:

The Twenty-fourth Amendment, forbidding poll taxes, was passed in 1964. The poll taxes had prevented some poor whites and most blacks in the South from voting. In 1965 Congress passed the Voting Rights Act. This was not an amendment, but it increased the effectiveness of the Fifteenth Amendment by outlawing restrictions, such as literacy tests, that states had used to prohibit blacks from voting.

TEACHER	STUDENTS
18 - Have students read the 26th Amendment and complete the AMENDMENT CHART.	Read the 26th Amendment and complete the CHART.
19 - Conduct Simulation #4. Hold a discussion and vote. All will now participate: Purple represents persons aged 18, 19, and 20.	All students participate.
20 - Ask students holding purple papers how they felt each time a vote was taken?	Purple paper holders respond by expressing their feelings.
21 - Ask, "Why was the voting age lowered to 18 in 1971?	Volunteer responses.

-- This was the time of the Vietnam War and the slogan "Old enough to fight, old enough to vote" was very popular.

TEACHER	STUDENTS
22 - Ask, "Are there any other groups who should be allowed to vote, or have we now achieved a truly democratic society?"	Provide answers.

CLOSING THE LESSON

Have students complete the VOTING RIGHTS QUESTIONNAIRE.

Answers to the Questions are:

1 - the states

2 - the national government

3 - A. NO AMENDMENT
- B. Amendment 19, 1920 (allowed women to vote)
- C. Amendment 26, 1971 (allowed 18 year olds to vote)
- D. NO AMENDMENT
- E. Amendment 15, 1870 (allowed blacks to vote)
- F. Amendment 19, 1920 (allowed women to vote)
- G. NO AMENDMENT

4 - None of these four would be permitted by the Constitution today.
- A - violates the Twentieth Amendment,
- B - violates the Twenty-Fourth Amendment,
- C - violates the Fifteenth Amendment, and
- D - violates the Twenty-Sixth Amendment.

AMENDMENT CHART

AMENDMENT NUMBER	DATE RATIFIED	WHAT DID THE AMENDMENT SAY? USE YOUR OWN WORDS.

VOTING RIGHTS QUESTIONNAIRE

1 - Who made decisions that determined who could vote in 1789?

2 - Since 1789, which government has gained more power in setting voting qualifications, the state or national government?

3 - For each person listed below, indicate which amendment was responsible for finally extending suffrage to the person and the date the amendment was ratified. If no amendment was necessary, write "NO AMENDMENT."

A. Plantation owner, 45 years old, white, male.

B. Domestic servant, black, female, 35 years old.

C. College student, white, female, 19 years old.

D. Blacksmith, white, male, 33 years old.

E. Teacher, black, male, 40 years old.

F. Housewife, white, female, 60 years old.

G. Unemployed, white, male, 25 years old.

4 - Put a check in front of each item that would not be permitted by the Constitution today.

____ A. A state makes women ineligible to vote.

____ B. A state decides to require voters to pay a 10 dollar fee to cover ballot costs.

____ C. A state denies American citizens of Chinese descent the right to vote.

____ D. The voting age is raised to 20 years old in California.

CHAPTER VIII

SUMMARY AND SYNTHESIS

OVERVIEW of the lesson: Lesson I - D. introduced students to the provisions included in the Bill of Rights. Subsequent lessons provided elaboration about the guarantees in the Bill of Rights and how they have been applied in specific instances. This concluding chapter requires students to apply their knowledge about the Bill of Rights to resolve hypothetical situations that resemble circumstances presented in earlier lessons. These hypothetical situations include substantive First Amendment issues concerning Free Exercise and Establishment of Religion, Freedom of Speech, and Freedom of the Press. Issues that involve the procedural rights in the Fourth, Fifth, Sixth, and Eighth Amendments are also included. Finally, the important concept of incorporation of the Bill of Rights is presented in three different hypothetical contexts.

Students are divided into groups of three. Each member of the group solves a hypothetical problem. One problem involves a substantive First Amendment issue, another is a procedural issue that involves a Fourth, Fifth, Sixth or Eighth Amendment right, and the third problem concerns an incorporation question, that may be either a substantive or a procedural issue.

Students who complete this lesson successfully will develop their ability to apply knowledge learned in one context to solve problems that are presented in a new situation. Therefore, critical thinking skills will be used.

The **PURPOSE** of this lesson is to assist students to apply knowledge they have gained in earlier lessons to the solution of hypothetical situations concerning important quarantees in the Bill of Rights. The lesson also reminds students that the Bill of Rights guarantees to citizens **now** rights that did not even exist before the1920s.

NECESSARY PREPARATION

1 - Determine the location of the Bill of Rights in the students' textbook or prepare a handout that presents the Bill of Rights.

2 - Duplicate copies of **APPLICATIONS OF THE BILL OF RIGHTS.**

3 - Decide how to divide the class into groups of three each. Determine how to assign each member of the group to be either a 1, 2, or 3.

SEQUENCE OF INSTRUCTION

TEACHER	STUDENTS
1 - Inform students that this lesson will require them to solve controversies involving the Bill of Rights.	Listen. Ask questions for clarification.
2 - Provide students with either a prepared handout that lists the Bill of Rights or inform them where they can locate the Bill of Rights in their textbook.	Locate a copy of the Bill of Rights.
3 - Divide the class into groups of three each and assign each member of the group to be 1, 2, or 3. (If each student is to solve all nine applications, you can skip the remainder of these instructions.)	Listen to instructions. Find out whether you are 1, 2, or 3.
4 - Provide each group with one of the three sets of APPLICATIONS. Direct students assigned as Number 1 to write answers to Problem 1, student Number 2 writes answers to Problem 2, and student 3 writes answers to Problem 3.	Solve the problem that corresponds to your number.
5 - After the answers are written, instruct student Number 1 in each group to read her problem to the other two group members. Then the student is to read the answers that have been prepared.	Student Number 1 in each group reads her problem and the answers to the other group members.
6 - Repeat Step 5 with the students who are assigned to Number 2 in each group.	Students numbered 2 in each group read his problem and the answers.
7 - Repeat Step 5 with the students who are assigned to Number 3 in each group.	Students numbered 3 in each group read her problem and the answers.

CLOSING THE LESSON

TEACHER	STUDENTS
8 - Ask a student who solved Problem 1 in Set A to read the problem and share the answers with the entire class.	Listen while the student reads the problem and shares the answers. Decide whether the answers are correct.
9 - Ask other students who solved this problem whether they have the same answers. If not, ask them to share their answers.	Others who solved this problem share whether they have the same answers.

The constitutional provision is in the First Amendment: "Congress shall make no law. . . abridging the freedom. . . of the press," The mayor would not win unless he could show that the statements in the newspaper were false statements of fact or the editors did not investigate adequately to determine whether the facts were true or false. (See Lessons V - D. and E.)

10 - Ask a student who solved Problem 2 in Set B to read the problem and share the answers with the entire class.	Listen while the student reads the problem and shares the answers. Decide whether the answers are correct.
11 - Ask other students who solved this problem whether they have the same answers. If not, ask them to share their answers.	Others who solved this problem share whether they have the same answers.

The appropriate constitutional provision is in the Fourth Amendment: ". . . no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." The search is permitted because there was probable cause for the warrant and it stated the place to be searched and the things (drugs) to be siezed. (See Lesson VI - A.)

12 - Ask a student who solved Problem 3 in Set C to read the problem and share the answers with the entire class.	Listen while the student reads the problem and shares the answers. Decide whether the answers are correct.

TEACHER	STUDENTS
13 - Ask other students who solved this problem whether they arrived at the same answers.	Others who solved this problem share whether they found the same answers.

Each Problem 3 involves a time period that is prior to the year when the provision in the Bill of Rights was "incorporated." Thus the provision in the Bill of Rights does not protect citizens from actions of state and local governments. The answer therefore must acknowledge that, unless the state constitution provided for this protection, the state could deny the liberty--in this case unemployment benefits to persons who refused to work on Saturday due to religious beliefs. (See Lesson IV - C. for a discussion of the "incorporation" issue.) Lesson V - B. illustrates that today the First Amendment provision "Congress shall make no law. . . prohibiting the free exercise" [of religion], would prohibit a state from denying unemployment benefits to persons when religious beliefs require that they not work on their sabbath.

14 - Ask if other groups found that a provision in the Bill of Rights would be applied differently in different time periods.	Share examples of instances when provisions are applied differently at different time periods in American history.

Problem 3 in Set A and in Set B are also examples of non-incorporation. In Set A, Problem 3, the relevant issue is that the Establishment Clause of the First Amendment was not "incorporated" until 1947. Therefore Massachusettes, in 1806, could (and did) determine that the Congregational Church would be an official state-recognized church of the state. (See Lessons IV - C. and V - A.)

Problem 3 in Set B has a similar solution. The Just Compensation Clause of the Fifth Amendment had not been incorporated in 1888. Thus Mr. Green could not use this provision in the U. S. Constitution as a means to require the state to compensate him when they take property for a public use. (See Lessons IV - C. and VI - B.)

15 - Ask students to hand in the answers they have written for grading.	Hand in answers for grading.

APPLICATIONS OF THE BILL OF RIGHTS

For the problem that you are assigned, write answers to the following questions:

(A) Which Amendment in the Bill of Rights is involved?

(B) What words in that Amendment apply to the problem?

(C) What is the solution for the problem provided by the provision in the Bill of Rights?

PROBLEM SET A

1 - The mayor sues a local newspaper for libel after an editorial in the paper accuses him of being incompetent because he failed to obtain a large sum of money for the city from the federal government, due to the fact that he missed the deadline for requesting the funds.

2 - A Superior Court Judge in California sets $50,000 as the bail for a "shady character" who asks for a jury trial after he is charged with driving 40 miles per hour in a school zone where the speed limit was 15 miles per hour.

3 - In 1806, the state of Massachusettes declares that the Congregational Church shall continue to be the official recognized church of the state.

PROBLEM SET B

1 - In 1994, the state legislature of Utah declares that, beginning in the year 2000, Mormonism will be the official religion of the state.

2 - After being told by a reliable informant that drugs are stored in a garage, a local police officer watches known drug dealers leave a particular address, obtaines a warrant to search the garage at this address, and enteres the person's garage while he was not at home. He finds several pounds of cocaine in the garage.

3 - In 1888, a state legislature enacts a statute taking a portion of Mr. Green's property in order to build a state highway over it.

PROBLEM SET C

1 - Three high school students are expelled when they refuse to stop carrying a small sign into their classrooms that caused several other students to engage in a fight in the school hallway. The wording on the sign protested a decision by the principal that denied students the opportunity to have a school debate team.

2 - A state prosecutor, over the objection of the defendant, is granted permission to postpone the trial of an accused mass murderer for one year and to prohibit anyone from viewing the trial when it does take place, because he believes that the people in that area will react too negatively if the trial is held soon.

3 - In 1896, a state official denies unemployment benefits to a Seventh Day Adventist who was fired from his job for refusing to work on Saturday because of his religious beliefs.

Following are suggested solutions to **APPLICATIONS OF THE BILL OF RIGHTS** problems that are not discussed in the instructions.

SET A

Problem 2

The Bill of Rights provision is in the Eighth Amendment: "Excessive bail shall not be required." Certainly $50,000 would be considered excessive for a speeding offense.

SET B

Problem 1

The provision in the Bill of Rights is the First Amendment provision stating: "Congress shall make no law respecting an establishment of religion. . ."

Because this provision was incorporated in 1947, the state of Utah would be prohibited from establishing a state religion.

SET C

Problem 1

The provision in the Bill of Rights is in the First Amendment: "Congress shall make no law. . .abridging the freedom of speech. . ."

Although students are protected by provisions in the Bill of Rights, school officials may take actions concerning school sponsored activities that are reasonably related to legitimate teaching and educational concerns. When there is a significant disturbance of the educational process, the activity is not protected expression under the First Amendment. (See Lesson VIII - B.)

Problem 2

The provision in the Bill of Rights is in Amendment Six: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . ."

If the defendant, through motions submitted to the judge by his lawyer, does not agree to these conditions, he has a right to a trial in a timely manner and the public (and the press) normally may not be excluded from the proceedings.

The Importance of Vocabulary Teaching:

We include a list of key words which we believe essential to successful learning about the Bill of Rights, but we do so with caution. It is not our intention to inflict on students an endless round of copying lists of words and definitions. That is not vocabulary development. In fact research shows clearly that forcing students to slavishly copy words from lists interferes with comprehension and hinders learning.

Vocabulary knowledge is essential to comprehension. We can not, for example, understand the ideas of political science and history without knowing what the words of these disciplines mean. A reader's level of vocabulary is one of the best predictors of how well that reader will comprehend a text. Increasing knowledge of political science and history vocabulary is a basic step in the learning which is essential to fully understanding civic knowledge. But vocabulary learning does not mean merely mastering words. Effective vocabulary teaching will employ such approaches as **Semantic mapping** where a theme such as freedom is selected and students learn to cluster related words around the theme word. In time the students are shown how to group the words into categories such as those words which are subordinate to the theme word. Successful vocabulary instruction will also include lessons in which **students learn to make connections** among different words and categories. For example words which have some similar features like the words law, code, statute, and bill could be compared and contrasted to see in what way these words have components which are shared and in what way they can be distinguished from each other. Vocabulary instruction is most successful in classrooms where there is a **genuine interest by the teacher** in the exploration and discovery of the fullest meaning of words. In the best situations there will be **frequent discussions** of vocabulary. The teacher can **pose puzzling questions** which assist students to seriously consider the meaning of key words. Can a crime be legal? Is freedom determined by the Constitution or do we have the Constitution because we are free?

We are hopeful that this list of words will be useful to teachers in developing an integrated, imaginative, routine of vocabulary exercises carried out during the study of the Bill of Rights.

Word/ Phrase
Abridgment
Abstract
Abstract conceptualization
Accuse
Acquisition
Action (s)
Actual malice
Administering
Advocating
Agency
Allocating
Allocating resources
Allocation of resources
Ambassadors
Ambition
Amendment
Anti-Federalists
Appeal
Appellate
Application
Appropriate
Appropriate money
Arguments
Assume
Attorney
Authority
Award
Bail
Balances
Basic
Basic feature
Basic principle
Beliefs
Believe
Bill
Bill of Rights
Broad interpretation
Cases

Word/ Phrase
Category
Certificate
Charter
Checks
Checks and balances
Circumstances
Citizens
City
Civil
Civil Liberties
Clause
Clear and present
Co-equal
Coin
Commander
Compensation
Compulsory
Concept
Conclusion
Confederation
Confess
Consensus
Consent
Conservative
Consider
Constitution
Constrain
Constraining
Constraints
Constraints on power
Contradict
Control
Controversy
Convention
Convict
Conviction
Council
Counteract
County

Word/ Phrase

Court
Courts assume power
Crime
Critical
Critical feature
Cruel
Debts
Decide
Decide in favor
Decision
Declaration
Declaration of Rights
Declare
Deductive
Defendent
Defense
Defense and security
Defining (Define)
Definition
Democracy
Democratic
Demonstrate
Demonstrators
Denied
Deny
Department
Deprive
Desecrate
Development
Disorder
Divide
Division of power
Domestic
Domestic matters
Due
Due process
Duty
Easily monitored
Educational

Word/ Phrase
Egocentric
Elected
Election
Enforce
Entanglement
Enumerated
Enumerated Liberties
Essential
Establishment
Establishment clause
Evidence
Example
Excessive bail
Exclusionary
Exclusionary rule
Executive
Exists
Fact
Fair
Fairness
Faith
Feature
Federalism
Federalists
Fighting words
File a suit
Flag
Flag salute
Foreign
Foreign affairs
Foundation
Framer
Free
Free exercise
Free expression
Free press
Free speech
Freedom
Function

Word/ Phrase
Fundamental
General welfare
Governing
Government
Governmental
Governmental system
Governor
Grievances
Guarantee
Guidelines
Hypothetical
Idea
Identification
Identifying
Immunities
Impairment
Impartial
Impeach
Importance
Incorporation
Individual
Inductive
Influences
Inform
Insuring safety
Interpret
Issue
Jeopardy
Job
Judge
Judicial
Judicial power
Jurisdiction
Just
Knowingly
Law
Law's impact
Lawmaking
Lay purpose

Word/ Phrase
Left wing
Legal
Legal system
Legislature
Lemon test
Libel
Liberal
Liberty
Limitation
Limited
Limits
Literal
Local
Majority
Majority opinion
Malice
Mayor
Meaning
Member
Metaphor
Minority
Minority opinion
Mnemonic
Moral
Morality
Narrow interpretation
Nation
Nation state
National defense
Nationalism
Natural
Natural Rights
Necessity
Nominate
Obscene
Openly neutral
Opinion
Opponents
Opposing arguments

Word/ Phrase
Opposing parties
Opposition
Ordain
Order
Ordinance
Organization
Orthodox
Outweigh
Overturn
Parliament
Partial
Parties
Peace
Peacetime
People
Person
Persons
Police
Policies
Political
Political idea
Political protest
Political reality
Politicians
Politics
Position
Power
Prayer
Prescribe
President
Press
Primary effect
Principle
Principles
Prior censorship
Prior restraint
Privacy
Private

Word/ Phrase
Private sector
Privileges
Procedural
Process
Prohibit
Prohibitions
Property
Proposition
Provision
Public
Public nuisance
Public peace
Punishments
Pure speech
Purpose
Ratification
Ratify
Reason
Reasonable
Reasoning
Reciprocal
Reckless disregard
Reconsider
Reconstruction
Redress
Refute
Regulate
Regulating
Religious
Religious beliefs
Represent
Representative
Represented
Require (ed)
Resources
Restrain
Reverse

Word/ Phrase
Right wing
Rights
Role
Roots
Rule
Rules of fairness
Safety
Salute
School
Search
Secede
Secretary of State
Secular
Security
Seizure
Self
Self-incrimination
Senator
Separation
Separation of power
Significant role
Slanderous
Social
Social contract
Social interest
Social norms
Society
Soldier
Sole
Sole power
Speech
Speedy and public trial
Spend
State
Statute
Stringent
Subsidization
Subsidization of economic acti

Word/ Phrase
Substance
Substantive issues
Sue
Suit
Supporting arguments
Supreme
Supreme Court
Supreme law
Symbolic speech
System
Systemwide
Tangible events
Tax
Taxes
Testify
Tests
Threat
Trial
Unanimous
Unitary
Unity
Unlawfulness
Unreasonable
Unusual
Verdict
Veteran
Veto
Violate
Violation
Volunteer
Vote
Voting
Voting Rights
Welfare
Witness
Worship
Writs of mandamus
Youth